

SUMMARY OF INCIDENT:

On 08 November 2012, at approximately 1534 hours, Beat #XXXX, Officer A and Officer B along with Beat #XXXX, Officer C and Officer D responded to a burglary in progress call at XXXX XXXXX XXXXXXXX XXXXXX. Upon arrival, the officers determined that there was not a crime in progress at the location, and they cleared the call.

Officer B and Officer A began to leave the area, driving westbound through the alley from XXXXXXXX XXXXXX toward XXXXXXXX XXXXXX. Officer C and Officer D were following them through the alley. As Officer B drove through the alley, Officers A and B observed Subject 1 walk into the alley, moving towards them. The officers claim to have seen Subject 1 holding a handgun in his right hand. According to the officers, Subject 1 looked towards Officer A and Officer B and immediately turned in the opposite direction while tucking the handgun to the left side of his body. Subject 1 walked quickly away and then ran XXXXXXXXXXXX on XXXXXXXX XXXXXX and out of sight of Officers A and B. Officer B drove north onto XXXXXXXX XXXXXX in pursuit of Subject 1 and used his police radio to notify OEMC that he and Officer A were in pursuit of a black male (Subject 1). Officer B also provided OEMC with a description of Subject 1's appearance and that he ran XXXXXXXXXXXX on XXXXXXXX XXXXXX while holding the left side of his body.

Officer B turned XXXXXXXX onto XXth XXXXXX and brought the vehicle to a stop. Officer A exited the vehicle and pursued Subject 1 on foot as Subject 1 ran XXXXXXXXXXXX through a vacant lot. It is reported that, as Officer A pursued Subject 1 through a vacant lot, he announced to Officer D, who had exited his vehicle, that Subject 1 had a gun.

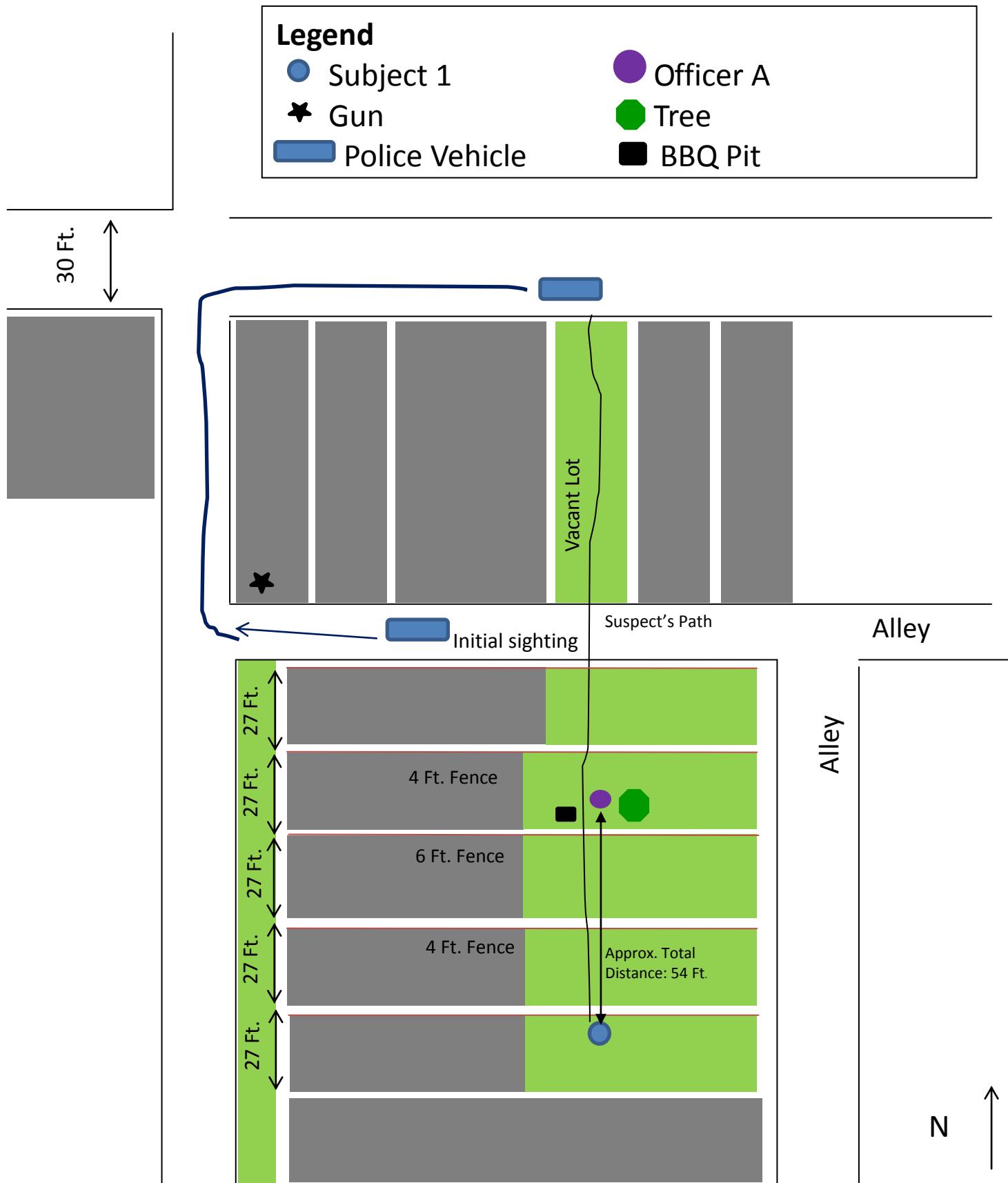
Officer A continued to pursue Subject 1 as he ran XXXXXXXXXXXX through the backyards of several residences on XXXXXXXX XXXXXX, while jumping and climbing over fences. Officer D paralleled Officer A's pursuit by running XXXXXXXXXXXX down an the alley that ran parallel to Subject 1's flight path.

After Subject 1 jumped over the fence at XXXX XXXXX XXXXXXXX XXXXXX, Officer A fired one shot in Subject 1's direction, striking Subject 1 in the back of his head. At the time Officer A fired his weapon, he was standing in the backyard of XXXX XX XXXXXXXX XXXXXX, approximately 50-55 feet from Subject 1.

Officer A would later state that Subject 1 had stumbled, reached toward his waist, and turned in his direction. Officer A asserts that, he believed Subject 1 was armed, and he feared that Subject 1 intended to shoot at him, leading him (Officer A) to fire his weapon at Subject 1.

Officer D, who was in the alley when Officer A fired at Subject 1, proceeded toward the backyard of XXXX XXXXX XXXXXXXX XXXXXX where he found Subject 1 lying on the ground. Officer D handcuffed Subject 1 and searched Subject 1's body and the area surrounding Subject 1's body for a handgun, but found nothing.

During a search of Subject 1's path of flight, Officer E found a .22 caliber, black colored revolver in the front yard of XXXX-XX XXXXX XXXXXXXX XXXXXX, which is the front yard of the building where Subject 1 initially turned and ran from Officers B and A.



ALLEGATIONS:

It is alleged in a Civil Suit, filed by Subject 2, that on 08 November 2012, **Officer A**:

1. Used an unreasonable and excessive amount of force when he shot Subject 1.
2. Used deadly force against Subject 1 which was unprovoked and unwarranted.

APPLICABLE RULES AND LAW:

Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department.

Rule 6: Disobedience of an order or directive, whether written or oral.

Rule 38: Unlawful or unnecessary use or display of a weapon.

Chicago Police Department's General Order 02-08-03, Section III, A; Deadly Force

Illinois State Statute 720 ILCS 5/7-5; Peace Officer's Use of Force in Making Arrest

INVESTIGATION:

The **IPRA Preliminary Report** reflects the information provided by Deputy Chief A, who was the On Scene Incident Commander who responded to this event. Deputy Chief A related that on 08 November 2012, at approximately 1534 hours, two unmarked tactical vehicles, Beats XXXX and XXXX, responded to a report of a burglary in the vicinity of XXth and XXXXXX. After the officers determined that the burglary was unfounded, they drove west from XXXXXX through the XXXX-XXXX alley XXXXX of XXth XXXXXX. As the officers approached XXXXXX, the officers observed a black male, now known as Subject 1, in a XXX XXXXXX walking north on XXXXXX XXXXXX across the opening of the alley. The officers observed Subject 1 tucking a "pistol" into his waist with his right hand. Deputy Chief A related that when Subject 1 saw the officers, he gave them an "Oh, shit" look and "power-walked" away before running XXXXX on XXXXXX out of the officers' sight. The lead squad vehicle, Beat XXXX, drove west in the alley and turned XXXXX onto XXXXXX XXXXXX in pursuit of Subject 1. The second squad vehicle, Beat XXXX remained in the alley near a power pole.

Deputy Chief A related that Beat XXXX turned XXXX onto XXth XXXXXX, where the passenger officer, Officer A, exited the squad vehicle and pursued Subject 1 on foot. Subject 1 ran XXXX on XXth XXXXXX and then XXXXX through a vacant lot on the XXXX side of the building at XXX-XXX XX XXXXXX. The officers assigned to Beat XXXX exited their vehicle and heard movement. Subject 1 ran XXXXX across the alley, over a fence, and into the backyard of a residence. Officer A continued to pursue Subject 1 on foot while one of the officers assigned to Beat XXXX ran XXXX in the alley to the XXXX-XXXX alley between XXXXXX and XXXXXX to parallel the foot chase. Subject 1 climbed over fences into other backyards as he continued

¹ Officer A's star number was changed from #XXXX to #XXXX.

running XXXXX. Deputy Chief A related that he was told that when Subject 1 climbed over the fence into the backyard of XXXX XX XXXXXXX, he stumbled, reached to his waist, crouched, and turned in Officer A's direction. Officer A was in the back yard of XXXX XX XXXXXXX near a tree and barbecue grill and was shouting, "Police!" and telling Subject 1 to show his hands. When Subject 1 turned in Officer A's direction and reached to his waist, Officer A fired one shot at Subject 1, striking Subject 1 in the head. Subject 1 fell to the ground in the backyard of XXXX XX XXXXXXX.

Deputy Chief A was told that the officer who had paralleled the foot chase in the XXXXX-XXXXX alley heard the gunshot while he was behind a garage. That officer jumped over a gate, entered the backyard of XXXX XX XXXXXXX, handcuffed Subject 1, called for an ambulance, and searched Subject 1 and the immediate area for a gun. That officer did not find a gun. Deputy Chief A was told that responding officers searched the route of the pursuit and located a revolver at the XXXXXXXXX corner of the apartment building at XXXXXXX XX XXXXXXX. The revolver was a .22 caliber "Long" model. (Att. #4)

A **Sketch of the scene** drawn by IPRA Investigator A depicts the path of the pursuit, the location where the shooting occurred, the position of Officer A when he discharged his weapon, the position of Subject 1's body where he fell, and the location where the gun was recovered. (Att. #5)

The **Major Incident Notification Report**² documented that the officers were returning from a burglary in progress call when they observed the offender in the XXXXX alley of XXXXXXXXX. The offender looked in the officers' direction and immediately turned and started to walk away. The officers observed a handgun in the offender's hand. The officers pursued the offender through several yards. The officers gave verbal commands to drop the weapon and show his hands while announcing their office. The offender refused to comply and continued to flee. As the offender cleared a fence, the offender reached into his pocket. The officer, fearing for his life, fired one time. The offender was struck once and pronounced dead on the scene. The offender's weapon was recovered containing four live .22 caliber rounds and one expended .22 caliber round. (Att. 104)

The **Case Supplementary Report** detailed the canvass undertaken by Detectives, who canvassed in the XXX block of XXXX XXXXXXXXX, the XXXX block of XXXXX XXXXXXX, and the XXXX block of XXXXX XXXXXXX. No new information was uncovered during the canvass. (Att. 85)

Department Reports³ provide information related to the incident, the detectives' canvass, Subject 1's autopsy, the detectives viewing of the video from the residential building at XXX-XXX XXXX XXXXXXXXX XXXX, statements given to the Detectives by Officers A, B, D, C, E⁴ and witnesses 1⁵, 2⁶, 3's, and 4⁸ (Atts. #8, #57 and #85)

² This report lists Officer A as the victim and Subject 1 as the offender.

³ Department Reports consist of the Original Case Incident Report, Detective Supplementary Reports.

⁴ Officer E found the gun in the yard at XXXX XXXXX XXXXXXX XXXXX.

⁵ Civilian 1 was interviewed twice by IPRA. (See Attachments #18-19 and #98-99)

The Detective Files and General Progress Reports contained copies of Department Reports,⁹ the Medical Examiner's Postmortem Examination of Subject 1, Laboratory Reports from the Illinois State Police Forensic Services, Social Media Photographs of Subject 1 holding various firearms and the detectives notes used to complete the Department Reports. (Att. #129)

Officer A's **Tactical Response Report (TRR)**¹⁰ documents that Subject 1 did not follow verbal direction, fled, and placed Officer A in imminent threat of a battery. More specifically, the report states:

R/MEMBER OBSERVED SUBJECT GRAB AT HIS WAISTBAND AND SPIN TO FACE THE MEMBER. R/MEMBER FEARING THE SUBJECT WAS STILL ARMED AND FEARING AN ATTACK CAUSING GREAT BODILY HARM DISCHARGED HIS WEAPON.

Box XX documents that Subject 1 was armed with a Revolver. (Att. #6)

The Officer Battery Report (OBR) completed by Officer A documents that Officer A provides the same narrative as that of the TRR. Officer A had no apparent injury. (Att. #6-7)

Chicago Police Department Event Query #1231309507¹¹ for November 8, 2012, at approximately 1516 hours documents that Beats #XXXX and XXXX responded to a burglary in progress call at XXXX XXXXX XXXXXXXX XXXXXX. (Att. #108)

Chicago Police Department Event Query #XXXXXXXXXX and #XXXXXXXXXX for November 8, 2012 documented the following:

- 15:33:59 dispatched notified of foot pursuit.
- 15:34:12 male in XXX XXXXX holding side.

⁶ Civilian 2 was not interviewed by IPRA. He was inside a garage when he heard someone yelling "Police" then he heard a single gunshot. When he came out of the garage he observed the police.

⁷Civilian 3 was entering her building when she heard and observed a police vehicle driving XXXXXXXXX on XXXXXXXXX. She then observed the police vehicle stop and a police officer exit the vehicle and run through a vacant lot.

⁸Civilian 4 was inside the garage with Civilian 2 when he heard what sounded like a gunshot in the alley. He did not exit the garage and he heard nothing else.

⁹ Department Reports consist of the Original Case Incident Report, Detective Case Supplementary Reports, Inventory Reports, Crime Scene Processing Reports, Investigative File Inventory Report, Property Release Order, firearms Receipt & Worksheet, Subject 1's Juvenile Criminal History Report and the Detectives General Progress Reports.

¹⁰ Box XX lists the reporting member as Officer A, signature XXXXXX, dated 08 November 2012 at 21:11:08 hours. Box XX lists the Reviewing Supervisor as IPRA Reviewing Supervisor A, signature XXXXXX, reviewed on 08 November 2012 at 21:11:52 hours. (Att. #6)

¹¹ This is the call that Beats #XXXX and #XXXX had responded to and closed out just prior to when they observed Subject 1 walk into the alley with a handgun.

- 15:34:24 Shots fired.
- 15:34:47 Shots fired by XXXX.
- 15:34:56 XXXX XX XXXXXXXX.
- 15:34:57 dispatch radio XXX for assistance.
- 15:35:13 XXX XXX assist units.
- 15:35:22 slowdown.
- 15:36:02 dispatch notifies Beat XXX to slowdown.
- 15:36:23 offender shot.
- 15:39:09 located in the vicinity of XXX XXXX XXXXXXXXXX XXXX /XXXX XXXX XXXXX XXXXXXXX XXX. (Att. #9)

Chicago Police Department Event Query #1231309955 for November 8, 2012, at approximately 1542 hours documents a call from XXXXXX XXX telephone #XXX-XXX-XXXX in the vicinity of XXXX XXXXX XXXXX XXXXXX. The caller has since been identified as Civilian 1. (Atts. 10 & 178)

The pertinent part of the OEMC transcription is as follows:

911: Chicago emergency [unintelligible]

Civilian 1: Hi, I was callin' because ... um ... some boy was just runnin' from the police officers ... and... while he was jumpin' the gate, one of the officers just shot him in the back... they shootin' at him...

911: He's been shot?

Civilian 1: In the [unintelligible] of XXXX block of XXXXX and...around the block...right there...on the main street

911: He was shot you think?

Civilian 1: Yeah

911: You said the guy has been shot?

Civilian 1: I think so... he was runnin' and he was jumpin' the gates and they, they just stopped and started ... they fired shots.

911: And where is he at now?

Civilian 1: I just seen him up over the gate, I never seen him get back up.

911: [unintelligible] I just gotta call this lady back ... she said the police hit somebody in the back... but when I transferred her ... the phone dropped.

The **Chicago Fire Department Ambulance Report** documents that Engine #XX responded to XXXX XXXXX XXXXXXXX Avenue, at approximately 1536 hours regarding an unknown

gunshot victim. The report indicates that the patient sustained a gunshot wound to the face with an exit in the back of the head.¹² The patient was found in a prone position with his wrists handcuffed behind his back. The report documents that the approximate time of death was 1611 hours. (Att. 141)

A Canvass of the area of the incident was conducted by IPRA in an attempt to locate additional witnesses and / or evidence. Although there was at least one witness found who heard the shooting, the canvass identified no eye witnesses to the shooting or additional evidence were located." (Atts. #16 & 30)

The **Crime Scene Processing Report** documents a list of inventoried and photographic evidence. The report also documents that a metal detector was used in the backyard of XXXX XXXXXX XXXXXXXX XXXXXX in an attempt to locate Officer A's fired cartridge case, with negative results. (Atts. #33)

A **Sketch of the scene** drawn by CPD Forensic Investigator A depicts the location where the shooting occurred, the position of Subject 1's body where he was shot and the location where the firearm reported to belong to Subject 1 was recovered. (Att. #162)

Evidence Technician Photographs document the incident scene, the body of Subject 1 in the rear yard of XXXX XXXXX XXXXXXXX XXXXXX, and a recovered handgun as it lay on the ground in the front yard of XXXX XX XXXXXXXX Address (Marker A). (Atts. #37-39)

Security cameras video footage from an apartment building located at XXX-XXX XXXX XXXXXXXXXX XXXX shows a person presumed to be Subject 1 wearing a XXX XXXXXX running XXXX past the front gate of the building. What appears to be an unmarked police vehicle can then be seen driving east on XXXXXXXXXX XXXX. The camera affixed to the rear of the building captured an unmarked police vehicle and an unmarked XXXXXXXXXX XXXX driving XXXX in the alley that is located XXXXX of XXXXXXXXXX XXXXM. A person¹⁴ was captured walking XXXX in the alley and at least one person was observed walking from the garage located at the rear of XXX-XXX XXXX XXXXXXXXXX XXXX. (Att. #29)

Illinois State Police (ISP) Division of Forensic Service Laboratory Report #XXXXXXXXXX, dated December 10, 2012, documents that the firearm belonging to Officer A was examined, test fired, and found to be in firing condition. (Att. #81)

Illinois State Police (ISP) Division of Forensic Service Laboratory Report #XXXXXXXXXX, dated January 16, 2013, documents the results of Gun Shot Residue samples from both hands of Subject 1. The document indicates that Subject 1 may not have discharged a

¹²This characterization of Subject 1's injuries is inconsistent with the Medical Examiner's report as will be described further below, which documents no injury to the face and an entrance wound only on the back of the head.

¹³ As will be described below, further investigation revealed that Civilian 1 did witness the shooting.

¹⁴ Civilian 2 was working in the garage at this address when the shooting occurred, it is unknown if the person observed on the video is Civilian 2 or a police officer.

firearm with either hand. If he did discharge a firearm, then the particles were removed by activity, were not deposited, or were not detected by the procedure. (Att. #56)

Illinois State Police (ISP) Division of Forensic Service Laboratory Reports #XXX-XXXXXX, dated April 18, 2013 and May 14, 2013, documents that one X.X. XXXXXS & XXXX revolver, one XXXXXXXXX discharged cartridge, three XXXXXXXXX live cartridges and one Federal live cartridge recovered at the scene were inventoried under Inventory #XXXXXXXX and #XXXXXXXX. The tests revealed that the revolver was found to be in firing condition. However, relative to all items, the test did not reveal any latent fingerprint impressions suitable for comparison. (Atts. #76-77)

On November 14, 2012, the **Bureau of Alcohol, Tobacco, Firearms and Explosives National Firearm Tracing Center** issued a report documenting that **Trace Number XXXXXXXXXXXXX** was conducted for the X.X. XXXXXS & XXXX revolver, which was recovered at the scene. The report indicated that the trace results were negative, due to the age of the firearm. On July 27, 2017, IPRA Deputy Chief Administrator A contacted the Bureau of Alcohol, Tobacco, Firearms and Explosives National Firearm Tracing Center to confirm the results of Trace Number XXXXXXXXXXXXX. ATF Supervisor A explained that neither the serial number associated with the revolver nor the firearm's importer are on file with the ATF. Therefore, no trace could be associated with the original firearm purchaser. (Att. #130)

Illinois State Police (ISP) Division of Forensic Service Laboratory Report #XXX-XXXXXX, dated February 19, 2015, documents that the XXXXX XXXXXXXX XXXXXX / zippered XXXXXXXXXX and XXXXX XXXXXXXX /XXX XXXXXX worn by Subject 1 were tested for gunshot residues. The Laboratory Report documents that no gunshot residues were observed via the visual examination or microscopic examination. The Laboratory Report documents that chemical testing did not reveal any gunpowder or copper residues. The Laboratory Report further documents that chemical testing did reveal the presence of lead; however, there was no discernible pattern suitable for further distance determination testing. (Atts. #89 & 93)

On June 26, 2015, **Civilian 5 of the ISP Forensic Crime Lab explained** ISP Laboratory Report #XXX-XXXXXX to IPRA Supervising Investigator A and IPRA Supervising Investigator B. Civilian 2 stated that the positive test for lead particulate matter could have resulted from the bullet striking something prior to striking Subject 1, and/or the bullet fragmenting upon impacting Subject 1. Civilian 2 also explained the process under which these tests are conducted. Civilian 2 stated that the garment to be tested is laid flat, layered by a series of cloths soaked with a chemical agent that react separately to gunpowder / gunshot residue, copper, and lead. The garment is ironed, infused with heat, in order to pick up the presence of each element. Civilian 2 stated that the cloudlike lead positive test could have resulted from the ironing process. Civilian 2 added that the absence of gunpowder / gunshot residue and copper does not indicate a close range gunshot. (Att. #101)

The Postmortem Examination Report from the Cook County Office of the Medical Examiner for Subject 1 classified Subject 1's death as a homicide as a result of a gunshot

wound to the back of the head. The report further indicated that an examination of the skin around the gunshot wound of entrance revealed no evidence of close-range firing.¹⁵ (Att. #55)

The Toxicologic Analyses from the Cook County Office of the Medical Examiner for Subject 1 indicates that Subject 1's blood test was negative for Benzoylecgonine, Ethanol and Opiates. (Att. #55)

Radiological Images from the Cook County Office of the Medical Examiner depict multiple fragments lodged in the back of Subject 1's head. (Att. #95)

A Social Media Search documented in the Detective Files details the discovery of eight photographs from seven posts on facebook.com. Two of the eight photographs are duplicates that were posted twice. Five of the eight photographs depict a young black male believed to be Subject 1 posing with a handgun. In one of these photographs, the words "R.i.p Subject 1/twin" appear above the photo of the young black male believed to be Subject 1. Another photograph features at least eight young black males posing together in a group. One male, whose face is partially obscured by a piece of cloth, is posing with a revolver-type handgun. In addition, one photograph depicts a law enforcement patrol vehicle with the words "XXXXX XXXX" typed across the top of the photo and "XXXXXX" typed across the bottom. (Att. #129)

The **Arrest Report** completed by Officer A documents that Officer A and Officer B arrested Subject 1 on July 28, 2012 for the offense of gambling. (Att. 116)

CIVILIAN WITNESSES:

Civilian 1 provided three statements to IPRA. The first was taken 9 November 2013, the day after the incident. The second was taken June 30, 2015, approximately two and half years after the incident. The third statement was taken August 16, 2016.

In the first statement, Civilian 1 recalled seeing Subject 1 as he fled from the police, rounding the corner onto XXXXXXXXX, then running through the yards and hopping over fences. However, she denied hearing or seeing the gunshot. In the second statement, Civilian 1 admitted having heard the gunshot and having seen Subject 1 scaling a fence just before the shot. In these first two statements, Civilian 1 claimed that she gave her phone to an unknown female who used it to call 911.

During the third statement, Civilian 1 reiterated her observations about Subject 1's flight from the officer and what she observed as to the shooting. However, in the third statement Civilian 1 admitted that it was she who placed the 911 call saying she had seen the police shoot Subject 1 in the back.

The following provides summaries of the three statements.

¹⁵ See page #2, Evidence of Injury, section #1.

In a statement to IPRA on 09 November 2012, witness Civilian 1, stated that on the date and time of the incident, she was in the vicinity of XXth and XXXXXXXX XXXXXX waiting for a friend. As Civilian 1 stood near the intersection of XXth and XXXXXXXXXXXX XXXXXX she saw a black male wearing a XXX and XXX clothing¹⁶ running away from two white male police officers, across the street from where she was standing.

Civilian 1 stated that after the black male ran past her location, an unknown black female asked to use Civilian 1's cell phone. Civilian 1 stated that her attention was focused more on the unknown black female who had Civilian 1's cell phone than the black male who was running from the police officers.

Civilian 1 stated that when she got her cell phone back from the unknown black female, the cell phone was in 911 mode." Civilian 1 stated that she assumed that the unknown black female must have known the black male that was running from the police officers. After Civilian 1 got her cell phone back, she received a call from 911 regarding the earlier phone call made from her phone.

In this first statement to IPRA, Civilian 1 stated that she did not know which direction the police officers and the black male ran, but confirmed that it was further away from where she was standing. Civilian 1 stated that she did not see the black male with a weapon. Civilian 1 did not observe the black male holding his clothes or waist area because he was holding the gates, "hopping" the fences; specifically Civilian 1 stated that "naw he ain't have no weapon" and "he couldn't hold nothing' because he was holding' onto the gates, hoppin' the gate"¹⁸ Civilian 1 also remarked about how fast Subject 1 was running, stating that "yeah, he was movin' fast."¹⁹ When more specifically asked if she had seen Subject 1 holding any part of his body, Civilian 1 responded, "naw cuz he was grabbin' the gates," referring to the fences that Subject 1 went over as he fled.

Civilian 1 did not see the police officer fire a weapon. Civilian 1 stated that she saw the police officer fall, as it appeared that he tripped trying to get over the fence. Civilian 1 stated that she heard a sound, but because there was construction on the road, she thought the sound came from the construction. When Civilian 1 heard the sound, it never entered her mind that it might have been the noise of a gunshot. Civilian 1 stated she could not tell what the two officers looked like because the officer was too far from where Civilian 1 was standing. Civilian 1 stated that she could not tell if the two officers were wearing plainclothes or a uniform. Civilian 1 did not see if the two officers had their guns out while they chased the black male. Civilian 1 stated that she did not hear the two officers or black male say anything because they

¹⁶ Civilian 1 uttered that the clothing could have been XXXXX, she did not know. Att. 19 at page 6.

¹⁷ Witness 1's cell phone is XXX-XXX-XXXX which is the same phone number that called 911 on November 8, 2012 at approximately 1542 hours under event #XXXXXXXXXX. The unidentified caller stated that a guy was running from the police and was climbing over the fence when the police started shooting at him. He was hit in the back. He went over the fence and never got up. (Att. 10)

¹⁸ Statement of Civilian 1, Att. 19, page 7.

¹⁹ *Id.* at page 6.

²⁰ *Id.* at page 12.

were too far away. When asked to describe the officer she saw, again. Civilian 1 claimed she was unable to provide a description because "it was too far."²¹

Civilian 1 stated that she is not from the area and did not know the black male. Civilian 1 stated that she did not see the black male on the ground because it was too far away. Civilian 1 did not see an ambulance arrive at the scene because she had left the area.

(Atts. #18-19)

In a second statement to IPRA on 30 June 2015, Civilian 1, was interviewed while in an IPRA vehicle near her residence. Civilian 1 was asked to clarify some of the information she provided in her earlier statement. Civilian 1 stated that she has not seen the unknown black female who used her cell phone since the date of the incident. Civilian 1 confirmed that she had observed a black male jumping over the fences while being chased by the police. Civilian 1 recalled that the white male police officer was wearing a black bulletproof vest and regular clothing. Civilian 1 stated that the black male that was running from the police officer was three to four houses/yards ahead of the police officer.

Civilian 1 stated that she did not see the police officer that was chasing the black male jump any fences. Civilian 1 stated that she observed the police officer's arm appear to get stuck on the fence when he attempted to climb over it, adding that the officer never made it over the fence. When asked what she meant when she said she saw the officer "tripped," she stated that "he was tryin' to jump the gate but he didn't make the first gate because the gate and his arm, this part got caught on the gate."²² According to Civilian 1, when the officer's arm got stuck on the gate, Subject 1 was already "two or three houses down because he was jumpin' the gates."²³ According to Civilian 1, she did not see the officer jump any fences during the chase.

In contradiction to the first statement, in this second statement, Civilian 1 acknowledged that she heard a single gunshot, but denied seeing who fired the shot.²⁴ Civilian 1 said that she heard the shot, and then did not "see the boy come back from the fence that the tried to jump."²⁵ Civilian 1 claims that she saw Subject 1 on the fence when she heard the gunshot, and that Subject 1 went over the fence but failed to get back up. Civilian 1 described seeing Subject 1 as he scaled the fence: "had both his hands comin' up over the fence ... like he was tryin' to bring his lower body over."²⁶ Civilian 1 noted that it seemed that Subject 1 was familiar with scaling the fences: "I could tell he looked like he did this before."²⁷ Civilian 1 stated that she did not see any police officers in the same yard with black male, as she left the area thereafter. (Atts. #98-99)

In a third statement to IPRA on 22 August 2016, taken at XXXX XX XXXXXXXX XXXXXX, witness Civilian 1, Civilian 1 stated she stands by her previous statements regarding the details of the incident but she agreed to answer clarifying follow-up questions regarding the

²¹ *Id.* at page 9.

²² Att. 99 at page 5.

²³ *Id.*

²⁴ *Id.* at page 7.

²⁵ *Id.* page 8.

²⁶ *Id.* at page 10.

²⁷ *Id.* at page 11.

police involved shooting that took place on 08 November 2012. Civilian 1 described how clearly she was able to view the events from her vantage point, remarking that due to the time of year there was no foliage obstructing her line of sight. She also described how she observed Subject 1 jumping the fences and gaining distance on Officer A, stating "he was just doin' it good, like he was gone. Basically he was gone. If he didn't get shot he was gonna get away."²⁸ Civilian 1 also described Subject 1 grabbing the last fence he jumped with both hands and elevating his body over the fence stating "his body was high but you didn't see it come back. After you heard the shot, he didn't come back up."²⁹

Civilian 1 did admit that she had previously lied to IPRA investigators about an unknown female asking to use her cell phone to call 911. Civilian 1 admitted that it was she herself who made the 911 call. Civilian 1 stated that she lied about the female borrowing her phone, as she was afraid to become involved as a potential witness in the case. Civilian 1 stated, I don't wanna get killed dealin' with this from no officer, from nobody dealin' with this. I don't play that kinda stuff. I got a daughter.³⁰ (Att. 178)

In a statement to IPRA on 07 June 2013, Civilian 6, who lives at XXXX XX XXXXXXXX XXXXXX, stated that he was in his kitchen washing dishes when he heard commotion coming from his backyard. He heard his backyard fence rattle, as if someone was jumping or being pushed into the fence. Approximately two seconds later, Civilian 6 heard one gunshot. One to two seconds after he heard the gunshot, Civilian 6 walked over to the kitchen window that faces his backyard and saw a young man wearing a XXX XXXXXX lying face down in the grass of his backyard with a white male uniformed police officer standing over the young man and another white male police officer in uniform standing near the garage approaching the other officer and the victim. Civilian 6 then walked into the front room of his home to get his cell phone to call his grandmother, who had just left the residence. While in the front room of his house, he observed 10-20 police officers run through the front gate of his property toward his backyard. By the time Civilian 6 ran back to his kitchen window, he observed that the young man had been handcuffed.

Civilian 6 did not observe anyone providing medical attention to the young man until approximately two and half hours after he was shot when EMTs attended to Subject 1. Civilian 6 did not see where the young man was shot, but saw police officers looking at the back of the young man's head as they examined and photographed him. Civilian 6 observed the police officers searching his backyard and rear porch area. Civilian 6 overheard some police officers state that they had not found anything during that search. Civilian 6 watched the police officers over an approximately three-hour period while they conducted their investigation, but no one from the Chicago Police Department knocked on his door or came to his apartment to talk to him about what he saw. (Atts. #66-67)

In statements to IPRA on 05 June 2013 and 09 July 2013, Civilian 7 stated she was sitting at the window of a XXX XXXX XXXXXX located at XXXX XX XXXXXXX Avenue when she observed a black male wearing a XXX XXXXXX run through the gangway of a building across the

²⁸ Att. 178, Page 13.

²⁹ *Id.*, Page 36.

³⁰ *Id.*

street from the XXX XXXX XXXXXX. A few minutes later, she observed an unmarked police vehicle and a marked police car drive up and stop. Civilian 7 then observed a "heavily built" black male police officer wearing plainclothes run through the same gangway. The same black male police officer and another police officer later came out of the gangway to the front of the same building and waited until other police officers, including one who wore a white shirt, arrived on scene. The police officers then put yellow tape around the area. Civilian 7 did not hear any gunshots that day. Civilian 7 provided an account of what she witnessed to someone from the Chicago Police Department. During her interview on 09 July 2013, Civilian 7 viewed photographs of two houses located across the street from the XXX XXXX XXXXXX, which she identified the residential gangway that she observed the black male wearing a XXX XXXXXX run through. The photographs Civilian 7 viewed are attachment #72 in this investigation. (Atts. #60, 71, 72 & 73)

In a telephone conversation with IPRA on 15 November 2012, Civilian 8 stated that, at the time of this incident, he was inside his home located at XXX XX XXXXXXXXX. Civilian 8 stated that he did not see the police-involved shooting, but he did hear a gunshot. Civilian 8 stated that, when he walked outside and into his backyard, he observed a body on the ground in the backyard of a residence several houses away from his. When Civilian 8 walked over to the yard where the body was located, and asked Civilian 8 whether Civilian 8 knew who owned a vehicle that was parked in the lot next to the yard. Civilian 8 informed the detective that the vehicle was Civilian 8's, and Civilian 8 moved the vehicle from that location. After doing so, Civilian 8 went back inside his residence and did not observe anything else. (Att. #47)

Attempts to locate potential witness, Civilian 9, were unsuccessful. Civilian 9's name and telephone were provided to IPRA by Subject 1's mother, Subject 2. Subject 2 indicated that Civilian 9 was a witness to the shooting. Subject 2 did not provide an address for Civilian 9. According to Subject 2, Civilian 9 is a friend of Subject 1. Civilian 9 did not respond to attempts to contact her by telephone at XXX-XXX-XXXX on November 9, 2012, November 15, 2015, at approximately 1130 hours and December 13, 2012, at approximately 1145 hours. Attempts to contact Civilian 9 at her residence, XXXX XX XXXXXXXXX XXX, XXXX #X, on June 2, 2017, June 5, 2017, June 14, 2017, June 16, 2017, June 21, 2017, and June 28, 2017 were also unsuccessful. (Atts. #15, 48, 50, 157 and 183)

Attempts to interview a potential witness, Civilian 10, were unsuccessful. In a telephone conversation with IPRA Investigator B, #116 on December 12, 2012, at approximately 1340 hours, Civilian 10 stated that he was on scene at the incident location after the shooting, but he did not observe the actual shooting. Civilian 10 scheduled an appointment to come to IPRA on Monday, November 19, 2012 at 1300 hours for an interview. However, Civilian 10 failed to appear for the interview. Civilian 10 also did not respond to a letter mailed to him. Civilian 10 was contacted at telephone #XXX-XXX-XXXX. (Atts. #48 & 51)

On-scene Interview with Detectives

On November 8, 2012, pursuant to the investigation conducted under RD #XX XXXXXXX, Detective A, Sergeant A, and Lieutenant A conducted interviews of the involved officers. The following is a summary of each statement to the detectives.³¹

³¹ Att. 57.

Officer B told detectives that, when they first encountered Subject 1, he saw Subject 1 take one or two steps into the alley, look in the officers' direction, then turn around and begin running out of the alley.³² According to Officer B, Subject 1 had a black-colored handgun in his right hand.³³ Officer B stated that he then observed Subject 1 running XXXXXXXXXXXX on the XXXX sidewalk of XXXXXXXX and out of view.³⁴ Officer B next observed Subject 1 running northbound on the XXXX sidewalk of XXXXXXXX while holding his left waist area.³⁵ (Att. 57)

Officer D stated that he observed Subject 1 run from the XXXXX alley of XXXXXXXXXXXX XXXXXXXXXXXX on XXXXXXXX. After seeing Officer A and B's vehicle accelerate out of the alley, Officer D heard Officer B broadcast over the air that they were pursuing an individual who was "holding his left side."³⁶ Officer D stated that Officer C then stopped their vehicle in the alley anticipating that Subject 1 might double back. Then Officer D overheard Officer B broadcast that Subject 1 was, in fact, running back towards the Officers D and C's vehicle, so he got out of the vehicle and began running XXXX. Officer D then saw Subject 1 run out of the vacant lot, still while holding his side, crossing over the alley, over a guard rail and into the rear yard of XXXX XXXXX XXXXXXXX. According to Officer D, Officer A followed, yelling that Subject 1 had a gun. According to Officer D, Officer A pursued Subject 1 XXXXXXXXXXXX through the backyard. (Att. 57)

Officer C recounted that, as he and his partner Officer D approached XXXXXX, he observed a subject wearing a XXX XXXXXX. He saw the subject run from the alley heading XXXXXXXXXXXX on XXXXXXXX. He then saw Officers A and B's vehicle accelerate out of the alley and turn XXXXXXXXXXXX on the XXXXXXXX. Officer C then heard Officer B come over the air that the subject was running northbound on XXXXXX while holding his side. Officer C related that he then stopped the vehicle anticipating that the subject might double-back. Shortly after, he did hear Officer B call over the air that the subject was in fact running back towards he and Officer D. He and Officer D exited the vehicle; Officer D began to run eastbound and Officer C then saw the subject run XXXXXXXXXXXX from the vacant lot and across the alley while holding his side. Officer C stated that Officer D continued to head XXXXXXXXXXXX in pursuit of the subject. Officer C re-entered his vehicle and drove XXXXXXXXXXXX on XXXXXXXX to cut the subject off should he run XXXXX and out onto XXXXXXXX. Officer C stated that, while he was driving, he heard a single shot. He stopped his vehicle on XXXXXXXX and ran into the backyard of a home located on the XXXX block of XX XXXXXXXX. From there, he observed Officer D place handcuffs on Subject 1.

Officer A recounted that he and his partner, Officer B, were driving an unmarked XXXXX XXXXXXXX and had just responded to a burglary in progress call along with Officers D and C in beat XXXX, who followed in an unmarked XXXXX. When traveling XXXXXXXXXXXX through the alley XXXXX of XXXXXXXXXXXX, he observed a male subject in a XXX XXXXXX enter

³² *Id.* at page 18.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ Att. 57 at page 19.

the alley from XXXXXX on foot. When the offender "rounded the corner" into the alley traveling eastbound, Officer A saw a black revolver in his right hand that the offender was attempting to place in his waistband. The offender looked up and saw the police and fled XXXXX on the XXXX side of the sidewalk of XXXXXXXX. Officer A lost sight of the offender, but he and his partner pursued the subject XXXXX on XXXXXXXX and observed the offender holding his left side. The offender continued XXXXX on XXXXXXXX and east on XXXXXXXXX when Officer A lost sight of him again. Officer A and his partner continued to pursue the person XXXXX on XXXXXXXX and XXXX on XXXXXXXXX and accelerated to catch up. The offender then fled XXXXX through a vacant lot. Officer B stopped the vehicle and Officer A got out and pursued the offender on foot. Officer A yelled to the offender "stop, police, drop the gun."³⁷

The offender continued to flee XXXXX through the lot and across the alley XXXXX of XXXXXXXXX. The offender went over a guard rail into the backyard of XXXX XX XXXXXXX. Officer A then saw Officer D just to the XXXX running XXXX in the alley, and Officer A told Officer D that the offender had a gun. The offender then fled XXXXX into the backyard of XXXX, jumped or climbed a fence into XXXX, then jumped or climbed over another fence at XXXX, where he stumbled to ground. The offender then rose, looked back at him [Officer A], reached into his waist, then turned his body and right arm in Officer A's direction. According to Officer A, in fear for his life and the life of other officers, and believing the offender was armed, the officer fired one time. (Att. 57)

It should be noted that there is no indication in the interview or the detective's notes associated with the interview in which Officer A mentioned that he observed Subject 1 periodically reaching into or toward his waist as he fled through the yards and over the fences.

OFFICERS' STATEMENTS:

In a statement to IPRA on November 8, 2012 at 2150 hours, Officer D, #XXXX, stated that, on the date of the incident, he and his partner, Officer C initially responded to a burglary in progress call at XXXX XX XXXXXX XXXXXX.³⁸ The burglary in progress ended up being a false call. As he and Officer C were leaving the scene, Officer C drove behind an unmarked XXXXX XXXXXXXX that Officer B was driving. Officer D described this driving maneuver as "wolf-packing".³⁹ While in the car following Officer B's vehicle, Officer D observed Subject 1, who was about 100 feet away and wearing a XXX XXXXXX, run from the opening of the alley northbound on XXXXXXXX XXXXXX. Officer D saw Officers A and B turn XXXXXXXXX out of the alley and "heard them come over the air saying that they had an individual in a red jacket running from them holding his side."⁴⁰ Officer D stated that Officer C stopped the vehicle in the T-alley just in case Subject 1 ran back toward Officer D and Officer C. Then Officer D heard one of the officers (either A or B) come over the air again stating, "XXXX he's running' toward you

³⁷ *Id.* at page 16.

³⁸ Chicago Police Department Event Query #XXXXXXXXXX for 08 November 2012, at approximately 1516 hours documents that Beats #XXXX and XXXX responded to a burglary in progress call at XXXX XXXXX XXXXXX Avenue. (Att. #108)

³⁹ According to Officer D, "wolf-packing" is a term used to describe when one unit rides closely behind another to "have more officers together." (Att. 25 at page 7)

⁴⁰ Att. 25 at pages 8-9.

guys."⁴¹ Officer D and Officer C then exited the vehicle. Officer D began running east down the alley. Officer D stated that Subject 1 ran back towards his general direction, crossing the alley in front of him, at which time he could see that Subject 1 was holding his hand at his left side as he ran. Specifically, Officer D stated that Subject 1 was "running holding his side still," namely, his left side,⁴² but acknowledged that he did not see any weapon.

Officer D stated that he then observed Officer A, in pursuit of Subject 1, run through the vacant lot and yell "stop, police stop!" Officer D stated that he observed Subject 1 jump over the first fence into the second yard. Officer D stated that Officer A yelled to him that Subject 1 had a gun. Officer D stated that he then ran through the alley east of Officer A and Subject 1 in attempt to cut off Subject 1. As Officer D was running, he heard Officer A tell Subject 1 to "show me your hands, stop, police, drop the gun, drop the gun."⁴³

Officer D stated that he decided to run in the alley because it was quicker than jumping the fences as he hoped to cut off Subject 1. Officer D stated that while he was running in the alley, he did not see Subject 1 jump any additional fences or Officer A jump any fences. Officer D was not in a position to observe Officer A's flight path, he did hear a fence rattle which he believed was Officer A trying to climb the fence; he associated the noise as coming from an area he believed Officer A to be in.

Officer D stated that, after he heard the gunshot, he looked to his right into the back yard and he saw Subject 1 lying face down in the grass. Officer D stated that he holstered his gun in order to climb over the fence to get into the yard. Once in the yard, Officer D stated that he drew his gun again as he approached Subject 1. Officer D initially unholstered his weapon because he was told that Subject 1 was armed with a gun and he did not know who had fired the shot. Officer D also unholstered his weapon as he approached Subject 1 in the yard because he did not know who had fired the gunshot. Officer D observed Officer A standing "a couple yards [lots] to the north, north of me uh on the far side of the six foot fence."⁴⁴

Officer D stated that he observed that Subject 1's eyes were open and there was blood coming from Subject 1's mouth, but he was completely unresponsive. Officer D stated that he handcuffed Subject 1 as Officer A provided cover from the other yard. Officer D stated that Officer A was standing on the other side of a six foot fence a couple yards north of the yard where Officer D was standing with Subject 1. After Officer D handcuffed Subject 1, he conducted a quick pat down search. Officer D slightly lifted Subject 1 to search Subject 1's waistband. At that time, no weapon was found. Officer D later learned that a black revolver was found by Officer E in the area where the pursuit of Subject 1 began. (Atts. #24-25)

⁴¹ *Id.* at 11.

⁴² It should be noted here that, at this point, Officer D made no mention of Subject 1 holding his side when he first observed Subject 1 at the mouth of the alley. (Att. 25 pages 11-12)

⁴³ Att. 25 at page 13.

⁴⁴ *Id.* at page 17.

In a statement to IPRA on November 8, 2012 at 2232 hours, witness Officer B,⁴⁵ #XXXX stated he and his partner, Officer A, responded to a burglary in progress call at XXXX XX XXXXXXXX XXXXXX⁴⁶ that ended up being three males in a delivery truck and not a bona fide burglary call.

As Officer B drove XXXXXXXXX in the alley in their XXXXX XXXXX XXXXXXXXX, he and Officer A saw Subject 1, who was approximately 35 feet away. Subject 1 looked in their direction and Officer B observed a black object in Subject 1's hand that Officer B believed to be a handgun. Specifically, Officer B stated that he "observed directly ahead of me a, a male black wearin' a XXX XXXXX uh coming from the XXXXX takin' step into the alley goin' XXXXXXXXX. Takes approximately one step looks in our direction and takes another step goin' back onto XXXXXXXX. At which point in time I observed a black object in his right hand, what I believed to be a handgun."⁴⁷ Officer B stated that he accelerated his vehicle XXXXXXXXX toward XXXXXXXX XXXXXX where Officer B saw Subject 1 running at "full speed" XXXXXXXXXX on XXXXXXXX XXXXXX "holding his left side with both of his hands."⁴⁸ Officer B called out a description of Subject 1 and his direction of flight over the radio. Officer B then "got back on the radio give [sic] a description of the offender, his direction of flight, and uh pursued him XXXXXXXXX on XXXXXXXXX towards a vacant lot."⁴⁹

At this time, Officer B observed Subject 1 jump over a handrail. Officer B stated that he stopped the vehicle directly in front of the vacant lot and Officer A exited the vehicle and pursued Subject 1 on foot while Officer B drove XXXX on XXXXXXXXX, and then XXXX on XXXXXXXX XXXXXX parallel to Subject 1's flight path. According to Officer B, Subject 1 was still holding his left side as he ran through the vacant lot. Officer B stated that "when he began his initial run, I lost sight of him for about one second."⁵⁰ Officer B did not observe Subject 1 throw anything away or do anything with his hands, other than hold his side. According to Officer B, this took place in daylight.

Officer B stated that as he was driving XXXX on XXXXXX XXXXXX he heard "shots fired" called out over the radio. Officer B did not hear the gunshots. Officer B stated he exited his vehicle at approximately XXXX XX XXXXXXXX XXXXXX and ran through the gangway calling out Officer A's name because he did not see anyone. Officer B stated that he then ran through the next gangway into a rear yard where he observed Officer D. Officer B stated that he also observed Subject 1 on the ground. Officer B stated he then observed Officer A standing in a yard, two lots north of where Subject 1 was on the ground. According to Officer B, when explaining why he fired at Subject 1, Officer A "stated that he believed the offender was goin' to shoot his gun at him and uh he, he shot 'em in fear for his life."⁵¹

⁴⁶ Chicago Police Department Event Query #XXXXXXXXXX for 08 November 2012, at approximately 1516 hours documents that Beats #XXXX and XXXX responded to a burglary in progress call at XXXX XXXXX XXXXXXXX XXXXXX. (Aft. #108)

⁴⁷ Att. 27 at pages 8-9.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.* at 10-11.

⁵¹ *Id.* at page 16.

Officer B stated that at the time of the incident, he did not know Subject 1's identity, but after looking at Subject 1's arrest history, Officer B realized that he had arrested Subject 1 earlier in the year. Officer B believed, "Subject 1 was part of the XXX XXXXX XXXXXXXXX on XXth and XXXXXX who [were] in a current gang conflict in our uh, in our District and that there was a high probability that he may have a weapon."⁵² Officer B did not have any other direct experience relative to Subject 1, though he recalled intelligence bulletins being disseminated that indicated that persons affiliated with this gang had a high probability of having a weapon. This information was disseminated via bulletins on the CPD Intranet.

Officer B stated that he did not search for a firearm that may have been discarded by Subject 1, but that he did provide other responding officers with information regarding Subject 1's flight path. Officer B stated that Officer E located a handgun at approximately XXXX XXXXXXXX XXXXXX where the initial foot chase began. Officer B observed the firearm that was recovered at the scene. Officer B stated that he observed the handgun near "the address where the initial foot chase uh began."⁵³ Officer B observed the black revolver with a white handle on the ground, in a grassy area, on the east side of the street of XXXXXX XXXXXX. (Att. 27)

In a second statement to IPRA on 04 March 2016 at 0946 hours, Officer B, #XXXX stated that on 08 November 2012, the date of the incident, he was a tactical officer. Officer B stated that the tactical team has a separate roll call where they discuss any crimes that occurred during previous shifts, including gang activity or shootings. Generally, the team develops a boundary and discusses ongoing conflicts or missions that need to be completed. Relative to active warrants, the information is normally reviewed by individual officers at their own behest. This information is not discussed in individual roll calls. Tactical teams are usually comprised of 10 officers, Officer B stated that at the time of the incident, he was not aware that Subject 1 had an active warrant for his arrest. Officer B stated that, on the date of the incident, he did not have an assignment to locate Subject 1. Officer B subsequently added that he realized later after the incident that he and Officer A had arrested Subject 1 before, earlier that year in the summer but he did not recognize him at the time the incident occurred.

Officer B confirmed that he was working with Officer A and that he was driving the vehicle that the officers were in that night. Officer B stated that:

"As we were drivin' westbound in the T alley Subject 1 was comin' from XXXXXX and it appeared he wanted to step going XXXXXXXXX into the alley. So I observed him take a step into the alley. I immediately observed him look in our direction and change his direction of uh travel and go quickly turned north back onto XXXXXX. When he turned north is when I observed what I believed to be a hand, a handgun in his right hand. And shortly after that he took another quick step and it appeared that he began running. But from that distance from where I was at which was about the half way point of the alley, um I couldn't, I lost sight

⁵² *Id.*

⁵³ *Id.* at page 21.

of 'em right away. So I sped my vehicle up to see what he was doing and when I got to XXXXXXX is when I observed he was running full speed."⁵⁴

When asked to describe more specifically his observations as to the firearm, Officer B stated, "Yeah, I just observed the barrel of a, what appeared to be a barrel of a gun", adding, "So uh from the distance it just appeared to black, dark barrel of a handgun."⁵⁵

Officer B added that at the time he initially saw the gun he said to Officer A "Did you see that?" Officer B stated he was referring to Subject 1 in the alley with a handgun. Officer B stated that Officer A answered "Yes." Officer B stated that he saw the black barrel of a handgun. Officer B went over the radio and told OEMC that Subject 1 was running holding his left side, implying that he was armed. Officer B acknowledged that when he called the information about Subject 1 into OEMC, he only reported that he was "holdin' his side," not that he had observed him holding a firearm. When asked to explain why he had not stated that he had seen the subject with a firearm, Officer B stated:

"At that exact moment I was just sayin' what I observed. Um a lot of times when I say holdin' the side it just implies that a weapon's involved. But uh that's something I thought about. I just literally was on, on the radio driving and saying what I was observing as I was observing it."⁵⁶

Officer B added:

"When I was traveling out I wanted to verify everything that I was observing. So as I was observing the physical description I just observed from what I saw as I was driving. I, when I was right here and he was coming in, we were still approximately whatever the distance is let's just say 50 feet. And I just, I just wanted to verify everything that I, that I was observing."⁵⁷

Officer B stated that, although he did not notify OEMC that he observed Subject 1 with a gun, he acknowledged that he should have relayed that information to OEMC and responding officers by further stating:

"And like I previously stated, I should've did that but when I was on the radio I was just relayin' what I was observing in the exact moment. And as I was driving in and um speakin' on the radio I never had a chance to get back on because of everything that, that occurred afterwards. I, I, I never got a chance to get back on the radio."⁵⁸

⁵⁴ Aft. 156 at page 9.

⁵⁵ *Id.* at page 15.

⁵⁶ *Id.* at page 10.

⁵⁷ *Id.*

⁵⁸ *Id.*

Officer B stated that he understands that a person running holding their side and actually seeing a person with a gun in his hand are two different things. Officer B acknowledged that relaying the information that Subject 1 was observed with a gun was critical.

In a statement to IPRA on November 8, 2012, at 2105 hours, Officer C⁵⁹ stated that he and Officer D, along with Officers A and B, responded to a burglary in progress. After the call, Officers A and B were driving in an unmarked vehicle in front of Officer C's and Officer D's vehicle, a XXXX XXXXX XXXXX. The XXXXX was not equipped with an in-car camera system. Officer C, who was driving the XXXXX in the XXXXX alley of XXXXXXXXX, stated that he saw a "red blur take off," going XXXXXXXXXXXX on XXXXXXXX and that Officer B who was driving the unmarked vehicle, turned and pursued Subject 1. Officer C stated that Officer B gave out a description of Subject 1 and stated that Subject 1 was wearing a XXX XXXXXX and was holding his side. Officer C heard over the radio that Subject 1 was coming back in their direction.

Officer C stated that, at one point during the pursuit, he and Officer D exited their vehicle and he saw Subject 1 running while holding his left side. Officer C stated that he got back into the vehicle to pursue Subject 1 in parallel with his flight path as Officer D pursued Subject 1 on foot. Officer C stated that he had stopped his vehicle approximately three houses XXXXX from the alley on XXXXXXXX XXXXXX. Officer C was driving with the window down so he could hear the pursuit and at that time he heard a single gunshot. Officer C did not hear any verbal directions nor did he hear Subject 1 say anything. Officer C stated that he went over the radio and notified OEMC that there were shots fired. Officer C stated that he then looked for his partner because he did not know if he was hurt. Officer C did not see who fired the shot. Officer C stated that when he walked into the rear yard, he saw Officer D handcuffing Subject 1 as he laid in the rear yard. (Atts. #22-23)

In a statement to IPRA on February 18, 2016, at 1648 hours, Officer F stated that, on November 8, 2012, the day that Officer F accessed Subject 1's mugshot, he was working as a tactical officer, assigned to the XXXX, a tactical team. Officer F stated that he would check the CHRIS system on a daily basis for active juvenile warrants and, if he found any active juvenile warrants, he would use the CLEAR system to access a photograph of any juvenile that had an active warrant. The reason for this daily search is to see the warrants of the high crime areas in the district. In the event that he sees someone walking down the street, he would not recognize that the person had an active warrant unless he obtained a photograph of that person. Officer F stated that he would keep the photograph with him while he was working on the street.

Officer F stated that he did not recall accessing Subject 1's warrant or photograph. Officer F stated that he could have possibly shared the information about warrant with his tactical team, but he did not know if he did. Officer F stated that he does not prioritize the warrants, and that he usually organizes the warrants by the dates and the district

⁵⁹ Officer C gave a deposition (Att. #114) on 03 December 2013 in relation to Civil Lawsuit #XX X XXXXXX filed in the Circuit Court of XXXX County. His account of the incident he gave in his deposition is consistent with the statement he gave IPRA.

in which he is assigned. Officer F did not recall if he had prior contact with Subject 1. Officer F further stated that if a person is known for having active warrants in the district, then he would probably share that information with other tactical teams.

Officer F said he does not believe that he shared the information relative to Subject 1 and his active warrant with Officers A, c, or D. (Atts. #149-150)

In a statement to IPRA on February 18, 2016, at 0946 hours, Officer G stated that on the day of the incident, he was off-duty. Officer G stated that on November 6, 2012, the day that Officer G accessed Subject 1's mugshots, he was assigned to locate offenders who had active warrants and investigative alerts by Lieutenant B. Officer G stated that this has been his assignment for several years. Officer G stated that he was working with Officer H. Officer G stated that he accessed Subject 1's photograph because Subject 1 had an active warrant. Officer G stated that he would search for active warrants by accessing the Chicago Police Data Warehouse section of the CLEAR system for adults and by accessing the CHRIS system for juveniles. Officer G stated that he prioritized warrants according to violent offenders and that he would look for the most violent offenders first. Officer G further stated that Subject 1's warrant would have been a top priority because it was for an Aggravated Battery. (Atts. #146-147)

In a statement to IPRA on February 18, 2016 at 0930 hours, Officer I stated that on November 8, 2012, the day that Officer I accessed Subject 1's mugshot, he was working Beat #XXXX, assigned to a mission vehicle, and partnered with Officer J. Officer I stated that his assignment was to look for offenders with active warrants and investigative alerts. Officer I stated that he was not sure on what day he found out that Subject 1 had an active warrant. Officer I stated that he could have been made aware that a warrant was issued for Subject 1 by either accessing the Chicago Police Data Warehouse section of the CLEAR system to see what warrants were issued for the District, or by accessing the CHRIS system to search for juvenile warrants. Officer I stated that this was what he did on a daily basis, when he reported to work. Officer I stated that when warrants are issued, they can be issued specifically to district or city wide. Officer I did not recall if he had prior contact with Subject 1. Officer I stated that he searched for Subject 1's photograph because Subject 1 had an active warrant. Officer I stated that he would have shared the information about Subject 1's warrant with his partner, Officer J. (Atts. #143-144)

In a statement to IPRA on June 23, 2016 at 1750 hours, Officer E, stated that, on November 8, 2012 he along with his partner, Officer K, were either in the XXX District Station or leaving the XXX District Station when they heard a transmission over the radio regarding a foot chase in the vicinity of XXXX XX XXXXXX XXXXXX. Officer E stated that during that same transmission he later heard "shot fired by the police." Officer E and his partner drove to the location. Officer E stated that, when he first arrived on scene, he made sure the officers were okay. Officer E spoke with Officer B who stated that he and his team were involved in a foot chase with an individual that ended in a police involved shooting. Officer E was told by Officer B that the subject had been holding a firearm as he was running from the officers.

Officer E could not recall the specifics of what he was told, although he did remember that Officer B had informed him of the general flight path over which they had pursued the subject. Officer E began to walk the path of flight, in a search for a weapon that the subject might have discarded. Officer E stated that, while walking the flight path, he observed a firearm located at XXXX XX XXXXXXXX XXXXXX in a gated backyard. Officer E stated that he could not remember if Officer B told him that the subject no longer had the firearm or if he learned that information from someone else. Officer E further stated that he knew when he traveled the path of flight in search of a firearm that no firearm had been recovered from or near the subject.

Officer E stated that there were numerous officers on hand at the scene but he could not specifically recall anyone with him when he located the weapon. Officer E notified Sergeant B via the zone X radio. Sergeant B relocated to XXXX XX XXXXXXXX and directed Officer E to guard the weapon. Officer E remained there with the weapon until he was relieved. Officer E stated that he does not remember who relieved him and he was not there when the gun was collected.

Officer E stated that Officer B was specific about the details of the incident at the time but because so much time has passed he cannot recall exactly what Officer B told him. Officer E stated that he did not recall talking to Officers D, C, or A about the incident.

During the interview, Officer E was shown photographs taken at the scene [Attachments #39 and #57] where he identified the backyard of XXXX XX XXXXXXXX. He further stated that, from viewing the pictures, the firearm was marked by marker A and to the best of his recollection the photo depicted the firearm as he observed that day. (Att. #181)

Pursuant to the investigation, IPRA obtained three separate statements from Officer A.

In a statement to IPRA on July 24, 2014 at 1142 hours, involved Officer A,⁶⁰ stated that on November 8, 2012 he was assigned to Beat XXXXX, a plainclothes tactical unit, and worked with Beat XXXX, Officers D and C. Officer A and his partner, Officer B along with Officers D and C responded to a possible burglary call that ultimately proved to be false.

After leaving the call, as Officer B drove through the alley, Officer A observed Subject 1 enter the alley with a gun in his right hand. Officer A stated that Subject 1 looked in his and Officer B's direction, turned away from the officers, put the gun to the left side of his body, and fled.

Officer A stated that he and Officer B pursued Subject 1 in the vehicle and when he and Officer B got to a vacant lot, Officer A exited the vehicle and pursued

⁶⁰ Officer A gave a deposition (Att. #111) on 09 October 2013 in relation to Civil Lawsuit #XX X XXXXXX filed in the Circuit Court of XXXX County. His account of the incident he gave in his deposition is consistent with the statement he gave IPRA.

Subject 1 on foot. Officer A stated that, at this time, he crossed paths with Officer D; Officer A stated that he told Officer D that Subject 1 had a gun when they "crossed paths" during the chase.⁶¹ Officer A stated that Officer D paralleled the pursuit of Subject 1 by running in the alley while Officer A pursued Subject 1 through the back yards.

Officer A stated that, as he pursued Subject 1 he yelled out "Stop police! Drop the gun. Drop the gun."⁶² Officer A stated that he had his weapon drawn but had to periodically put it back in his holster, in order to get over the fences because Officer A did not want to jump over the fences with the weapon in his hand. Officer A stated that Subject 1 jumped over a fence that was approximately six feet in height, readjusted his waistband, and kept running. Officer A stated that Subject 1 then jumped over another fence which was the last fence he jumped — at which time point he:

"Uh, he gets to — it would be — one of the other fences. That's the last fence he went over. He actually goes over it, and readjusts but, hesitates. He stands up, hesitates, looks back, and then makes a, you know, movement towards his waistband. He gets kinda towards me, and then, at which point, I fired a shot."⁶³

Officer A stated that he was standing close to the fence when he fired his weapon. According to Officer A, as he looked through the taller fence, he could see Subject 1 clearly as he was on the other side of the shorter fence.

Officer A stated that Officer D then came into the yard from the alley where Subject 1 was, and handcuffed Subject 1 as he provided cover for Officer D from the yard where he was still standing. Officer A estimated he was standing in the second yard about 30-40 feet away from Subject 1 when he discharged his weapon. Officer A stated that he and Subject 1 were also separated by two fences when he discharged his weapon.⁶⁴

Officer A stated that a gun was later recovered along the flight path. Officer A stated that the firearm looked exactly like the one he saw Subject 1 holding in the alley. Officer A stated that he discharged his firearm because he was in fear for his life. He stated that he believed that Subject 1 was still in possession of the gun he had seen him with earlier. Officer A also stated that he believed that Subject 1 was reaching for the gun. At no point in the foot pursuit did Officer A see Subject 1 discard a firearm. Officer A lost sight of Subject 1 twice during the pursuit. The gun was recovered near the first spot that Officer A lost sight of Subject 1. (Ans. #79-80)

In a second statement to IPRA on March 4, 2016, at 1031 hours, Officer A, stated that on November 8, 2012 he did not have a specific assignment to locate Subject 1 and he was not aware that Subject 1 had an active arrest warrant until after the incident. Officer A stated that he did not recognize Subject 1 when he first saw

⁶¹ Att. 80 at pages 6-7.

⁶² *Id.* at 16.

⁶³ *Id.* at page 15.

⁶⁴ Details contained in the Crime Scene Processing Report and photographs of the scene indicate that there were three fences separating Officer A and Subject 1 at the time Subject 1 was shot. (Att. 33 and 37).

Subject 1 in the alley with the dark colored gun in his hand. Officer A stated that during the foot pursuit of Subject 1, he did not recognize Subject 1.

Officer A stated that when he discharged his firearm at Subject 1, Subject 1 had already cleared the fence that he had jumped and that he had both of his feet planted on the ground. When asked what Subject 1 was doing when he fired, Officer A made the following statements:

"he was reaching into his waistband area and turning towards me in a, like an abrupt movement."⁶⁵

"I saw 'em tuck [his hand] and he was coming towards me. He was drawing it, and that's when I fired."⁶⁶

"and he was like a, it was like a pause when he got over the fence that's when it was a very like his body was very like nervous. It was like I got the, it felt like as if he was very nervous." That's the way I got from the body, his body language." "Like indecisive."⁶⁷

Officer A stated that he believed Subject 1 was reaching for the handgun that Officer A had seen Subject 1 with earlier. Officer A stated that he thought Subject 1 was going to try and kill him. Officer A stated that he was in fear for his life and he fired one shot striking Subject 1. Officer A stated that he did not retrieve or pick up his shell casing, he did not see anyone else retrieve or pick up his shell casing, and he did not know if anyone else retrieved or picked up his shell casing. (Atts. #153-154)

In a third statement to IPRA on July 20, 2016, Officer A, was served with allegations and agreed to answer clarifying follow-up questions. In this statement, Officer A was not asked to recount the entire incident. Rather the purpose of this interview was to clarify some of Officer A's prior statements. Officer A stated that he first observed Subject 1 walking toward the mouth of the alley with a gun in his hand. Subject 1 looked in the officers' direction, tucked the gun in his waistband, and fled. Officer A stated that Subject 1 was running, hunched over, and he could not see his right hand, nor could he see what was in his waistband. Officer A stated that Subject 1 "never made any attempt to show that he was unarmed."⁶⁸

Officer A explained that Subject 1 "reached, he reached into his waistband area, couldn't see his hand and his body turned towards me."⁶⁹ He further stated that "he was, when he was running he was hunched over, not allowin' me to see his right hand. And you couldn't see what was tucked into his, I don't know if it was his waistband or shirt, but you couldn't see his hand and he would never make an effort to show me."⁷⁰ Officer A explained that

⁶⁵ Att. 154 at page 10.

⁶⁶ *Id.* at page 12.

⁶⁷ *Id.* at page 13.

⁶⁸ Att. 173 at page 12.

⁶⁹ Att. 173 at page 6.

⁷⁰ *Id.* at pages 9-10.

Subject 1's head and torso were turned towards him as he made the abrupt motion towards his waistband.

Officer A stated that Subject 1 was in a turning motion but did not take steps toward him. Officer A stated that, at that time, his firearm was drawn as Subject 1 had cleared the last fence, but could not recall what position he had it in. Officer A did recall that, at the moment when Subject 1 turned towards him, he had his firearm pointed at Subject 1.

Officer A stated that when Subject 1 was reaching for his waistband and turning to look in his direction, he fired his weapon and that he fired "almost simultaneously" while Subject 1 turned.⁷¹ Officer A was asked to explain, if Subject 1 was looking at him and turning his body toward him at the time he elected to fire, how it was that his shot struck Subject 1 in the back of the head. Officer A stated, "my guess is he turned his head back when simultaneously, split second, probably just turned his head right back."⁷²

As to the allegation that he used an unreasonable and excessive amount of force when he shot Subject 1, Officer A stated that he believed Subject 1 was drawing a handgun and believed Subject 1 was going to kill him.

As to the allegation that he used deadly force against Subject 1 which was unprovoked and unwarranted, Officer A stated that he believed Subject 1 was drawing the weapon he had previously seen him with, and was going to use the weapon to kill him.

During this interview, Officer A did clarify that when he stated that Subject 1 "was coming towards me" in his previous statement, he meant to say was that Subject 1 "was turning towards him and that Subject 1 did not take any steps toward the officer."⁷³ (Att. #173)

DEPOSITIONS:

Pursuant to civil lawsuit #XX X XXXXXX filed in the Circuit Court of XXXX County, depositions were conducted of Officers A, D, B, and C. Below is a summary of each deposition.

In his deposition conducted on December 4, 2013, Officer B stated that he and Officer A had been regular partners for approximately three years. Officer B acknowledged that he and Officer A are friends and that they socialize with one another. Officer B explained that he and Officer A were assigned to a "district tact team" and were to focus their attention on "gang and narcotic activity within the district and to also respond to any in-progress calls involving any type of violence or anything like that."⁷⁴

⁷¹ *Id.* at pages 113-14.

⁷² *Id.* at page 16.

⁷³ *Id.* at page 10.

⁷⁴ Att. 12 at pages 17-18.

Officer B was driving their police car that day. Officer B explained that, "normally we'll have five cars assigned to our team."⁷⁵ Officer B further recalled that he began his shift working with Officers D and C because Officer A had something else to do, but that they patrolled the last half of their shift together. Officer B acknowledged that he also considers Officers D and C friends and they also socialize together outside of work. Officer B recalled that they were in the vicinity of where the shooting incident occurred in response to a "burglary in progress" call that did not actually turn out to be a crime in progress.⁷⁶

When asked to describe what Officer B saw when they first encountered Subject 1 in the alley, Officer B stated, "I observed in his right hand the barrel of a handgun."⁷⁷ Officer B added further, "a black barrel of a handgun, approximately four inches."⁷⁸ Officer B claims to have observed this from a distance of approximately 50 to 75 feet.

Officer B explained that, after first seeing Subject 1 with the gun in his hand, he took off running and the officer momentarily lost sight of him. Officer B recalled reporting what he saw over the radio, stating "when I got back on the radio and I began giving a description of Subject 1 on the air to Dispatch."⁷⁹ Officer B gave the description as: "male black wearing a XXX, XXX XXXXXX."⁸⁰ When the officer next caught sight of Subject 1, he observed Subject 1 running XXXXXXXXX on XXXXXXXX. According to Officer B, when Subject 1 fled XXXXX on XXXXXXXX he was "holding his waistband on his left side" while "it appeared his right hand was towards the front of his body as well."⁸¹ Officer B further explained, "I believe as he was running his right hand moved away from his body in a running motion, but his left hand remained on his waistband."⁸² According to Officer B, he could still see Subject 1 holding his waist with his left hand after he turned the corner onto XXXXXXXXX and fled XXXXXXXXX through the vacant lot.

After Officer A got out of the car in pursuit of Subject 1, Officer B proceeded in pursuit of Subject 1 by car down XXXXXXX. Officer B traveled XXXXX on XXXXX and when he reached the middle of the block he heard "shots fired" over the radio.⁸³ Officer B stopped his car and proceeded on foot through the gangway of a residence going east to get to the alley that runs XXXX-XXXX between XXXXXX and XXXXXX. When he reached the backyard of a residence he saw Officer A standing in the backyard of the residence immediately to the XXXX of the one in which Officer A was standing, and he saw Subject 1 lying on the ground in the backyard of a residence immediately to the XXXX of the backyard in which he was standing. According to Officer B, Subject 1 was not moving and Officer D had already placed handcuffs on him.

⁷⁵ *Id.* at page 19.

⁷⁶ *Id.* at pages 21-22.

⁷⁷ *Id.* at page 25.

⁷⁸ *Id.* at page 27.

⁷⁹ *Id.* at page 30.

⁸⁰ *Id.*

⁸¹ *Id.* at page 9.

⁸² *Id.* at page 31.

⁸³ *Id.*

Before other police officers started arriving, Officer B spoke to Officer A "to find out what happened after [he] lost sight of both of them [referring to Officer A and Subject 1]."⁸⁴ When asked to recount what Officer A told Officer B in that moment, Officer B replied, "He [Officer A] said that he [Subject 1] had hopped three or four fences in a row. Just hopping fences from yard to yard."⁸⁵ Officer B also recalled that at the scene incident, shortly after the incident, when he asked Officer A what had happened, Officer A stated that, "he believed Subject 1 to still have a weapon and he believed that Subject 1 was going to turn his direction and fire — you know, possibly, you know, fire a weapon. He just basically explained to me, you know he made a movement in his direction that placed him in fear of his life."⁸⁶ When asked if Officer A specifically used the words, "fear for his life," Officer B acknowledged that he had not used that exact phrase.

As other officers arrived and inquired what happened, Officer B, "made [himself] available for anybody who wanted to know what was going on."⁸⁷ According to Officer B, he was sitting in his vehicle with Officer L for approximately one-hour in the aftermath of the event during which time he told Officer L about what had happened and how he had observed Subject 1 with the "barrel of the handgun."⁸⁸

According to Officer B, after they left the scene of the incident, he, Officer C, Officer A, and Officer D spent somewhere between two and four hours together at the Area Central office while they awaited being interviewed by detectives and IPRA investigators. According to Officer B, the officers "were like taking turns giving interviews with Detective A."⁸⁹ Officer B also explained that Officer A was present with him for the two to three hours between when he was interviewed by the detectives and when he was interviewed by IPRA personnel. Officer B recalled that they discussed the incident during this time period. After the interviews were completed, Officer B and Officer A left the Area Central office together, drove back to the XXX District, after which they both went home.

Officer B also explained that he went to two Employee Assistance Program ("EAP")⁹⁰ Counseling sessions during which the shooting incident was discussed. According to Officer B, the first session was held approximately three days after the incident and included Officers B, A, D and C. The second session was conducted a few weeks later and was attended only by Officer B and A.

In addition, according to Officer B, prior to the deposition, he and Officer A discussed the incident "a few times" when speaking one-on-one.⁹¹ Officer B recounted that, during the summer preceding the 2012 shooting incident, he and Officer A had arrested

⁸⁴ *Id.* at page 44.

⁸⁵ *Id.* at page 45.

⁸⁶ *Id.* at page 76.

⁸⁷ *Id.* at page 48.

⁸⁸ *Id.* at page 69.

⁸⁹ *Id.* at page 79.

⁹⁰ CPD offers a Professional Counseling Service/EAP to all current Department members and their family members and retired Department members. The services provided through this program are covered by a confidentiality policy as outlined in Employee Resource Orders E-06-01 and E06-01-02.

⁹¹ *Id.* at page 85.

Subject 1 on two occasions. According to Officer B, he did not realize this until he was back at the Area Central office and had seen a photo of Subject 1. Officer B recalled that the first incident was related to a robbery, while the second incident involved gambling (Att. 112)

In his deposition conducted on December 3, 2013, Officer D acknowledged that he is friendly with Officers B, A and C.

Officer D recalled that, after they first saw Subject 1, he heard Officer B come over the radio saying, "we got one running XXXXXXXXXX."⁹² Officer D provided more detailed information about where he was and what he was doing as Officer A chased Subject 1 through the vacant lot and into the backyards. Officer D observed Subject 1 come out of the vacant lot across the officer's path. According to Officer D, Officer A was following approximately 10 to 20 feet behind Subject 1. Officer D ran to Officer A and then both officers followed Subject 1 running side-by-side. It was then that Officer A informed Officer D that Subject 1 had a gun. When he observed Subject 1 climbing a fence into the next yard, Officer D told Officer A that he would try to cut Subject 1 off by running over to and down the alley. Officer D believed travelling through the alley would be faster than having to scale the fences across the yards. Officer D then ran to the alley and proceeded XXXXXXXXXX.

Officer D recalled sitting in the detective's area at the Area Central office with his fellow officers, but denies that they discussed the incident during this time. Officer D acknowledged having two conversations with Officer A about the incident, but insists that these conversations were about the timing of their respective depositions in the civil matter.

According to Officer D, officers will say "he's holding a side" when they want to convey that "the individual has a gun in his waistband."⁹³ When asked to explain why officers don't just say "he has a gun" when they believe someone has a gun, Officer D replied, "Well, for one, it's the way we always say it. If the guy has a gun in his waistband we always say, "He's holding a side" rather than "he has a gun." However Officer D clarifies, "If he has a gun in his hand, it's a different story."⁹⁴

When asked more specifically, "So when you hear an officer get on the air saying "He's holding a side," what does that mean to you?" Officer D replied, "That means the individual has a gun. They believe the individual has a gun."⁹⁵ (Att. 113)

In his deposition conducted on October 9, 2013, Officer A stated that in November 2012 he had been partners with Officer B for approximately three years. They worked on a tactical team which focused on gang and narcotic activity, as well as in progress violent crimes such as armed robbery and burglary. He also worked on the tactical team with Officers D and C. Officer A acknowledged that he was friendly and socialized

⁹² Att. 113 at page 28.

⁹³ *Id.* at page 83.

⁹⁴ *Id.*

⁹⁵ *Id.*

with Officers B, D, and C. When asked if he knew Subject 1 before November 8, 2012, Officer A stated that he had previously arrested Subject 1, however he did not recall who Subject 1 was at the time of the shooting.

Officer A stated that on November 8, 2012 he was in an unmarked police vehicle with Officer B. As they were driving down an alley, Officer A saw Subject 1 holding a gun in his hand. Officers A and B began to pursue Subject 1. As they followed him down an alley, Officer A stated that he saw Subject 1 tuck the gun towards his waistband, stating, "He was putting it as he was turning away from us. Put it, I'll say not in his waist, putting it towards his waistband. I don't know where it got tucked."⁹⁶

As the pursuit continued, Officer A saw Subject 1 holding his left side as he ran. Officer B stopped their vehicle on XXXXXXXX and Officer A continued the chase on foot. Officer A commented that he withdrew his weapon as soon as he exited the vehicle, and that the weapon he carried did not have a safety on it. Subject 1 continued to run at "full speed", pumping his arms as he ran.⁹⁷ Officer A did not see anything in either of Subject 1's hands as Subject 1 ran. Officer A shouted, "Police. Stop. Drop the gun. Drop the gun."⁹⁸

Subject 1 continued to run through the alley and jumped over a metal guardrail. Officer A testified that, by the time the officer went over the guardrail just after crossing over the alley, Subject 1 had already scaled two fences and was two city lots away from the officer. Officer A continued to pursue Subject 1 through the city lots and saw Subject 1 scale backyard fences with both of his hands, acknowledging that he did not see anything in Subject 1's hands as Subject 1 scaled the fences.⁹⁹ Officer A also stated that Subject 1 scaled two small fences and then one tall fence. After scaling the third, taller fence, Subject 1 fell to the ground. Officer A further stated that as Subject 1 got up off the ground, Officer A saw him adjust his waistband, "As if there were an item in there."¹⁰⁰

After scaling the tall fence, Subject 1 continued to run through city lots and scaled two more, smaller fences. Officer A stopped running in the second city lot. It was from this location that Officer A fired his weapon.

When describing the action that prompted Officer A to shoot Subject 1, Officer A stated that, after Subject 1 scaled a fence, "he kind of stumbles...at that point he looked back at me because I'm still telling him, 'Stop, stop, police.' He looks back... At that point when he looks back I could see his hands briefly."¹⁰¹ Officer A then stated, "Then he looks away and his hand goes into his waistband area."¹⁰² Officer A then clarifies that he saw Subject 1 look over his right shoulder and reach his right hand toward the left waistband

⁹⁶ Att. 111 at page 40.

⁹⁷ *Id.* at page 49.

⁹⁸ *Id.* at page 50.

⁹⁹ *Id.* at page 60-61.

¹⁰⁰ *Id.* at page 64.

¹⁰¹ *Id.* at page 74.

¹⁰² *Id.* at page 75.

area and states, "He then begins turning towards me and I fire one shot. I believed he was drawing his gun that I saw earlier."¹⁰³

When questioned by his attorney, Officer A stated that he could see Subject 1's face when he turned around to look back at the officer as he fled and that Subject 1 appeared "irritated."¹⁰⁴ When asked to explain further, Officer A stated: "It wasn't like he was a straight line running. It was that hesitation when he was getting up, he looked like he was irritated that I was chasing him or surprised."¹⁰⁵ Officer A further stated: "I believe he was trying to almost intimidate me into believing he still had the gun." Officer A added, "I believe that he was irritated and he was doing motions and I believe he was mad that he got rid of the gun."¹⁰⁶

ANALYSIS

I. INTRODUCTION

This investigation requires the reconciliation of two competing principles eloquently outlined in a recent U.S. District Court opinion in a civil matter involving a similar officer-involved shooting incident:

"[A] person has a constitutional right not to be shot unless an officer reasonably believes that he poses a threat to the officer or someone else." (citing *Weinmann v. McClone*, 787 F.3d 444, 450 (7th Cir. 2015) for "distilling this rule" from *Graham v. Connor*, 490 U.S. 386, 388 (1989) and *Tennessee v. Garner*, 471 U.S. 1, 11-12 (1985)). "On the other hand, police officers have a right to protect themselves, even when they do something risky like "pursu[ing] a fleeing felon

¹⁰³ *Id.*

¹⁰⁴ *Id.* at page 132.

¹⁰⁵ *Id.* at page 133.

¹⁰⁶ *Id.* at page 133 and 134.

into a dark alley." (citing *Estate of Starks v. Enyart*, 5 F.3d 230, 233-34 (7th Cir. 1993).

Childs v. City of Chicago, 2017 U.S. Dist. LEXIS 45156 (N.D. Ill. 2017).

II. APPLICABLE LAW AND POLICY

Consistent with Illinois state law as codified at 720 ILCS 5/7-5, according to the Chicago Police Department's General Order 02-08-03, Section III, A:

[A] sworn member is justified in using force likely to cause death or great bodily harm only when he or she reasonably believes that such force is necessary:

1. to prevent death or great bodily harm to the sworn member or to another person (hereinafter, the "first prong" of the policy), or;
2. to prevent an arrest from being defeated by resistance or escape and the sworn member reasonably believes that the person to be arrested (hereinafter, the "second prong" of the policy):
 - a. has committed or has attempted to commit a forcible felony which involves the infliction, threatened infliction, or threatened use of physical force likely to cause death or great bodily harm;
 - b. is attempting to escape by use of a deadly weapon or;
 - c. otherwise indicates that he or she will endanger human life or inflict great bodily harm unless arrested without delay.

The analysis of the reasonableness of an officer's conduct must be grounded in the perspective of "a reasonable officer on the scene, rather than with the 20/20 vision of hindsight" and "allow for the fact that police officers are often forced to make split-second judgments — in circumstances that are tense, uncertain, and rapidly evolving — about the amount of force that is necessary in a particular situation." *Plumhoff v. Rickard*, 134 S. Ct. 2012 (2014), quoting *Tennessee v. Garner*, 471 U.S. 1 (1985), internal quotation marks omitted. Also, such an analysis must take into account the totality of the circumstances confronting the officer, rather than just one or two factors. *Plumhoff*, 134 S. Ct. at 2020. See also *Scott v. Edinburg*, 346 F.3d 752, 756 (7th Cir. 2003). Nevertheless, the Supreme Court held in *Garner*, and has since reiterated, that "it is unreasonable for an officer to 'seize an unarmed, nondangerous suspect by shooting him dead.'" *Brosseau v. Haugen*, 543 U.S. 194, 197 (2004) (per curiam) (quoting *Garner*, 471 U.S. at 11).

As Chief Judge Kozinski of the Ninth Circuit once noted: "Nobody likes a game of 'he said, she said,' but far worse is the game of 'we said, he's dead.' Sadly, this is too often what we face in police shooting cases like this one." *Cruz v. City of Anaheim*, 765 F.3d 1076 (9th Cir. 2014). In cases such as this, where the officer "is the only witness left alive to testify" we must "look at the evidence with a critical eye." See *Plakas v. Drinski*, 19 F.3d 1143, 1147 (7th Cir. 1994); *Cyrus v. Town of Mukwonago*, 624 F.3d 856, 862 (7th Cir. 2010).

III. ANALYSIS OF THE EVIDENCE

As outlined above, consistent with Illinois state law, the Chicago Police Department policy governing the use of deadly force identifies two sets of circumstances under which the use

of deadly force is permissible. The first set of circumstances, as outlined in the first prong articulated above, involves situations in which deadly force is necessary to prevent harm to the officer or another person. The second set of circumstances, as outlined in the second prong articulated above, involves situations in which the officer is confronted with an individual who is attempting to defeat an arrest or escape. To properly evaluate this case, we must analyze the facts in light of both aspects of the policy and law.

A. Was It Reasonable for Officer A To Believe that Deadly Force Against Subject 1 Was Necessary to Prevent Death or Great Bodily Harm to Himself or Another Person?

We start our analysis by addressing the first prong of the policy which requires us to ask the question, was Officer A's use of deadly force against Subject 1 necessary to prevent death or great bodily harm to himself or another person? In making this assessment we must consider the reasonableness of the officer's conduct in light of the totality of the circumstances. *Marion v. City of Corydon*, 559 F.3d 700, 705 (7th Cir. 2009). Based on the circumstances of this case, this determination requires answers to the following two key questions:

- (1) At the moment when Officer A fired his single shot at Subject 1, was the officer's belief that Subject 1 was armed objectively reasonable?; and
- (2) If so, did Subject 1 make a sudden gesture at Officer A that could reasonably be interpreted as the threatened use of a firearm?

The available evidence to address these questions is analyzed below.

1. There is insufficient evidence to prove that it was unreasonable for Officer A to believe that Subject 1 might be armed when the officer fired.

a. Officer A's claim that he saw a firearm in Subject 1's hands, although possible, is questionable.

In his statements to detectives on the scene of the incident, his statements given to IPRA, and in his deposition, Officer A claims to have seen Subject 1 with a firearm in his right hand when the officers first encountered him in the alley. We need not merely accept Officer A's account of the events at issue. *Cruz v. City of Anaheim*, 765 F.3d 1076, 1079 (9th Cir. 2014) ("Mr' the deadly force context, we cannot simply accept what may be a self-serving account by the police officer.") (quoting *Scott v. Henrich*, 39 F.3d 912, 915 (9th Cir. 1994)). Rather, we must parse through all the evidence to assess the plausibility and reliability of the officer's account. *Id.* (noting that a court reviewing a use of deadly force incident must examine all the evidence in the record "to determine whether the officer's story is internally consistent and consistent with other known facts"). This includes circumstantial evidence that, if believed, would tend to discredit the police officer's story. *Cruz*, 765 F.3d at 1079.

Officer A's insistence that he actually saw Subject 1 carrying the firearm is inconsistent with Officer B's report to OEMC which failed to mention that Subject 1 was

armed. Rather, when Officer B called in the description of the fleeing Subject 1, the officer merely stated that he was "holdin' his left side."¹⁰⁷ Moreover, Officer A has provided inconsistent descriptions of what he saw.

When detectives interviewed him on-scene, Officer A told them that he "saw that Subject 1 had a dark colored handgun in his right hand that Subject 1 was attempting to place in his waist area."¹⁰⁸ In his deposition, which was taken just under a year later, on October 9, 2013, Officer A gave a much more detailed description of the firearm and the manner in which Subject 1 wielded it. Officer A claimed to have seen Subject 1 with the gun in his right hand, that the gun was dark in color and that, from 50 feet away, he could see the barrel of the gun which appeared to be that of a revolver.¹⁰⁹ Officer A also claimed that, when he first observed Subject 1, the gun was in his right hand with his "right arm pointed down along his right waist"¹¹⁰ and that Subject 1 turned away and put it [the firearm] to his left side and began running."

Officer A recalled hearing his partner call over the radio that they were in pursuit of a subject who was "holding his side and running."¹¹² Officer A claimed that he saw the gun in Subject 1's hand before his partner reported over the radio that they were pursuing a subject who was holding his side."¹¹³

The fact that Officer A claims to have seen Subject 1 wield the firearm in this manner and failed to ensure that this information was reported to OEMC to inform his fellow officers lacks credibility. To be sure, according to Officer D, when asked about what it means when an officer says that a fleeing subject is "holding a side," fellow officers understand the speaker to mean that the fleeing subject has a gun in his waist or that the speaker believes the fleeing subject may have a gun. But when a subject has a firearm in his hands, this would not be an appropriate description. "If he has a gun in his hand, it's a different story."¹¹⁴ Moreover, the assertion that Subject 1 was seen walking in broad daylight¹¹⁵ openly carrying a firearm also lacks credibility.

Officer B, who was in the car with Officer A when they first saw Subject 1, told the on-scene detectives that he had seen Subject 1 with a black colored handgun in his right hand. Officer B's failure to accurately report what he saw to OEMC also undermines the credibility of both officers' assertions.

The fact that both Officers A and B claim to have seen Subject 1 with a gun and failed to report this begs the question as to whether they actually saw the weapon or merely saw Mr.

¹⁰⁷ Att. 53

¹⁰⁸ Att. 57 at p. 16

¹⁰⁹ Att. 111 at pages 32-35

¹¹⁰ *Id.* at p. 34, lines 22-24

¹¹¹ *Id.* at p. 39

¹¹² *Id.* at p. 37

¹¹³ *Id.* at p. 39

¹¹⁴ Att. 113 at p. 83

¹¹⁵ In his deposition, Officer A acknowledged that the events took place in "broad daylight." Att. 111, pg 36. Similarly, Officer B also states the events took place in daylight. Att. 27, pg. 11.

Subject 1 holding his side, as was reported to OEMC, and based on that, surmised that Subject 1 might be armed. There is a very big difference between seeing someone holding his side, and therefore, having reason to suspect that the person might possess a gun and seeing someone out in broad daylight openly carrying gun. Both scenarios are important to report so fellow officers are forewarned. However, it doesn't require law enforcement expertise to understand why reporting the actual display of a gun would be important for fellow officers to know.

The credibility of Officer B's claim that he saw Subject 1 with a gun is further undermined by the fact that the officer was less definitive about having seen a gun in other statements related to the issue. In his IPRA interview, Officer B was less definitive about seeing the weapon, stating that he "observed a black object in his [Subject 1's] right hand, what I believed to be a handgun."¹¹⁶

Officer B's explanation for why he reported seeing a fleeing subject "holding his side" rather than having seen a firearm in the fleeing subject's hand is unconvincing. Officer B claims that he "just literally was on, on the radio driving and saying what I was observing as I was observing it."¹¹⁷ But Officer B further stated, "we were still approximately whatever the distance is let's just say 50 feet. And I just, I just wanted to verify everything that I, that I was observing."¹¹⁸ The fact that Officer B wanted to "verify" what he had seen implies that he was not completely certain about what he had seen.

Both Officer A and Officer B saw the firearm that was ultimately recovered at the scene.¹¹⁹ Having knowledge that a firearm was recovered and having had the opportunity to actually see the firearm that was recovered may have influenced the officers' accounts of the events. Certainly, Officer A's having seen the firearm would inform his ability to describe the firearm he claimed to have seen in Subject 1's hand.

It is also important to point out that, during his deposition, Officer A denied that he saw the gun at the scene of the incident after the shooting had occurred. "Question: You never saw the gun other than at the mouth of the alley? [before Subject 1 took off running] Answer: That's the only time I saw the gun, yes."¹²⁰ While in his 2014 IPRA interview, Officer A acknowledged that he had seen the gun after the shooting: "I just, like, saw it laying there from far away. I didn't actually get to inspect it, or anything, yeah. I just saw it there, there's the gun right there, and I — it was like a quick glance at it, and that was it."¹²¹

It is possible that Officer A denied having seen the gun at the scene of the incident during his deposition in an effort to enhance the credibility of his deposition testimony about having seen the Subject 1 carrying the gun. Officer A's ability to provide more detailed description of the gun, without having ever seen it, would lend credibility to the fact that he did in fact see the gun in Subject 1's hands.

¹¹⁶ Att. 27 at p. 8 lines 25-27

¹¹⁷ Att. 156 at p. 10

¹¹⁸ *Id.* at pages 10-11

¹¹⁹ Att. 27 at p. 21

¹²⁰ Att. 111 at pages 96-97

¹²¹ Att. 80 at p. 23

The strongest evidence to suggest that Officer A did, in fact, see Subject 1 with a firearm is the fact that Officer D has consistently stated that, when he crossed paths with Officer A as the officer pursued Subject 1 on foot across the alley, Officer A shouted to him that Subject 1 was armed.¹²² However, we must still be mindful that Officer D's account of the events might have been influenced by the facts that: (1) he, too, knew that a gun had been recovered; and (2) he had ample opportunity to discuss the events with Officers A and B at the scene as well as in subsequent conversations.

It is possible that Officer A did, in fact, see Subject 1 carrying a firearm that day. But, drawing reasonable inferences from all the available facts, it is also plausible that he did not, in fact, see Subject 1 carrying the firearm, that he merely saw him holding his side and suspected that he had a firearm.

b. Even If Officer A did not actually see Subject 1 carrying a firearm, Subject 1's conduct might otherwise have made it appear that he was armed.

Even if Officer A did not actually see a firearm in Subject 1's hand, Subject 1's conduct might otherwise have given Officer A the impression that he was carrying a weapon. Officers A, B and D all claim that at various points during his path of flight, the officers saw Subject 1 holding his side, more specifically, his left side. However, we have to consider these officers' accounts carefully in light of the circumstances that exist here which undermine the reliability of these statements. First, these officers were not only colleagues who frequently worked together, they were friends that socialized together. In fact, Officers B and A had been partners for three years (Att. 112, pg. 16).¹²³ The second reason to question the reliability of the officers' accounts is the fact that they had ample opportunity to discuss the events among themselves at the scene of the incident as well as on at least three other occasions that are documented in the record here. The first occasion was when the officers were together for several hours at the Area Central office taking turns being interviewed by the detectives. The second and third occasions were the EAP sessions the officers attended, one within a few days of the incident, and another within weeks of the incident. Even if there was no collusion regarding how the officers would ultimately describe the events in question, these multiple discussions could easily have influenced each officer's recollection of what happened.

In particular, Officer A's various accounts of what he observed Subject 1 doing with his hands as he fled are inconsistent and, therefore, may not be reliable. In his initial account to detectives, he made no mention of Subject 1 reaching to or around his waist as he fled. Given that this later became an important justification for Officer A's belief that Subject 1 was armed as he fled, it is surprising that the officer may not have mentioned this in the immediate aftermath of the event. Officer A first described this conduct on the part of Subject 1 at his deposition in the civil matter which was taken just under one year after the event took place. Furthermore, Officer A's ultimate description of the manner in which

¹²² Att. 25at p. 13; Att. 113 at pages 34-35

¹²³ Att. 112 at p. 16-20

Subject 1 turned and fled is inconsistent with that of his partner, Officer B. In his statement to IPRA, taken just hours after the shooting, Officer B claimed that he saw Subject 1 turn and run with a gun in his right hand. Officer B never described seeing Subject 1 turn to put his gun on the left side of his body prior to running north on XXXXXXXX, as Officer A had stated.¹²⁴ In his subsequent interview with IPRA taken on March 4, 2016, Officer B again stated that Subject 1 turned and immediately began running upon seeing the officers, making no mention of Subject 1 tucking the gun into his waistband.¹²⁵

According to the Detective's Case Supplementary Report (CSR), when initially interviewed, Officer A stated that, when he and his partner initially encountered him, "SUBJECT 1 had a dark colored handgun in his right hand that SUBJECT 1 was attempting to place in his waist area."¹²⁶ According to Officer A's account given at that time, "SUBJECT 1 then immediately turned around and ran out of the alley, running northbound on the east sidewalk of XXXXXXXX and out of view."¹²⁷ Officer A and his partner followed Subject 1 out of the alley, making the turn onto XXXXXXXX. It was then that Officer A claims he saw Subject 1 holding his left waist area, after which Officer B called into OEMC to report Subject 1's description and direction of flight.¹²⁸ Neither the CSR's summary of Officer A's initial account nor the detectives' notes associated with that report make any further mention of Subject 1 reaching into or at his waist area as he was being pursued through the yards and over the fences.¹²⁹ It is not until Officer A described the gesture Subject 1 made which prompted Officer A to discharge his weapon that Officer A reported that Subject 1 again reached toward his waist area, I3°.

In his deposition, Officer A described Subject 1's flight path as he ran east on XXXXXXXXX, then turned and ran through the empty lot.¹³¹ When asked to describe Subject 1's pace, Officer A stated that he was running at "full speed," that the officer saw his arms pumping, and that there was nothing in Subject 1's hands.¹³² This is consistent with the limited available video evidence as well as the account provided by Civilian 1 who saw Subject 1 as he turned the corner onto XXXXXXXXX from XXXXXXXX. When Civilian 1 saw Subject 1 round the corner, she described him as, "like he was runnin' ... for his life."¹³³

¹²⁴ Att. 27 at p. 8-9

¹²⁵ Att. 156 at p. 9

¹²⁶ Att. 57 at p. 16

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.* at pages 16-17

¹³⁰ Att. 57 at p. 17

¹³¹ Att. 111 at pages 44-48

¹³² *Id.* at pages 49-50

¹³³ Att. 178 at p. 16. While IPRA does find Civilian 1 to be a credible witness, a careful examination of the totality of her statements is necessary to support IPRA's credibility assessment. Civilian 1 gave three separate statements to IPRA and also made a call to 911 contemporaneous to the shooting. Although the description of what she saw never fundamentally changed, Civilian 1 clearly attempted to minimize her knowledge of and involvement in the incident. Civilian 1 also directly lied in her IPRA interviews on November 9, 2012 and June 30, 2015 to claim that the 911 caller was an unknown female who simply asked to borrow her phone. (Att. 99 and 19). During her third and final interview with IPRA on August 22, 2016, Civilian 1 finally admitted that she was in fact the individual who called 911 to report the shooting and she went on to explain that she feared potential police retaliation which caused her to lie initially. (Att. 178). While it is far from ideal that Civilian 1 was unable to be completely truthful with IPRA investigators about her role in this incident, her perceived fear is understandable.

Officer A then described what he observed as Subject 1 continued to flee through the yards and over fences.¹³⁴ Officer A described seeing Subject 1 scale fences and that, after each fence, Subject 1 "adjusts his waistband and gets up."¹³⁵ Officer A acknowledged that, during this time, Subject 1 was "maybe almost facing away from [him]."¹³⁶ Yet, the officer claimed that he saw Subject 1 "putting his hand into his waistband region and moving his hand around in that area ... as if there was an item there."¹³⁷ But when asked to clarify what he saw, Officer A stated, "I mean it was like very quickly he just adjusts, gets up and goes" and "He adjusts as he's getting up or when he's standing."¹³⁸ Officer A further stated: "He's adjusting his left side."¹³⁹ When asked to explain why he did not fire at Subject 1 when he saw him reaching to his left side as he fled, Officer A stated, "At that precise second I didn't believe that he was attempting to draw his weapon at that time" adding "I believe he was adjusting the gun so he could still have it with him."¹⁴⁰

When prompted by his attorney, during his deposition, Officer A explained that, Subject 1 appeared to be running in a similar manner to other armed suspects he has seen in his experience: "Almost every guy seems to run that way when there's a heavy gun in their waistband. It moves around so they have to hold it, otherwise it bounces around or it will fall out."¹⁴¹

However, according to Civilian 1: "It wasn't nothin' on his waist or nothin' or he reachin' for nothin'. Cause he was runnin' so fast."¹⁴² Based on the clothing recovered from the medical examiner's office, underneath his jeans, Subject 1 wore a pair of gym shorts over a pair of boxers.¹⁴³ Photographs from the scene also show that, at the time he was felled by the bullet, the belt-line of his jeans was well below his waist leaving a significant portion of the top of the gym shorts visible.

An alternate explanation for Subject 1's "adjusting his waist" after clearing each fence is that he was merely adjusting his clothing to facilitate his running. Civilian 1 described the pants Subject 1 was wearing: "his pants was like you know how these boys wear they pants," and she noted, "I think you could see his boxers."¹⁴⁵

given the events that she had witnessed. Furthermore, Civilian 1 has no relationship to Subject 1 or his family and no apparent reason to mischaracterize what she saw. Accordingly, there is sufficient explanation to rehabilitate her credibility.

¹³⁴ Att. 111 at pages 50-74

¹³⁵ *Id.* at 63

¹³⁶ *Id.* at 64

¹³⁷ *Id.*

¹³⁸ *Id*

¹³⁹ *Id* at 65

¹⁴⁰ *Id*

¹⁴¹ Att. 111 at pages 130-131

¹⁴² Att. 178 at p. 17

¹⁴³ Att. 55 at p. 1

¹⁴⁴ Att. 37 at p. 19 and p. 22

¹⁴⁵ Att. 178 at p. 17

Civilian 1 also described seeing Subject 1 using his hands to scale at least one fence as he fled.¹⁴⁶ Officer A did not dispute this fact, stating "he possibly put his hands down and jumped over it."¹⁴⁷ Photos from the scene and the autopsy show that Subject 1 had puncture wounds on the palms of his hands that would be consistent with wounds inflicted by the sharp barbs at the top of the chain-link fences he scaled.¹⁴⁸ Officer A has admitted that he never saw a gun in Subject 1's hand as he fled through the backyards over the fences.¹⁴⁹

Based on the available evidence, if one credits Officer A's account that he saw Subject 1 carrying the gun when they first came upon him in the alley, under these circumstances, it would be reasonable to presume that Subject 1 continued to possess the gun as he fled because it is plausible that Subject 1 tossed the gun into the yard just when the officers had lost sight of him.

However, it is also plausible that Officer A did not see the gun in Subject 1's hand as he claims, that he merely saw Subject 1 holding his side as he took flight from the officers causing them to suspect that Subject 1 had a firearm. Then having tossed the gun, Subject 1 continued to flee without it. Yet Subject 1's repeated adjustments of his pants after scaling fences could have appeared to be adjustments necessary to keep the firearm from coming loose. Thus, even if Officer A did not actually see the firearm, under these circumstances his suspicion that Subject 1 might be armed, might have been reasonable.

Although both officers deny this, we must also acknowledge that it is also possible that Officers A and B recognized Subject 1 and presumed he was armed from their knowledge of him as gang member and that Officer B called in to report a fleeing subject "holding his side" to convey to fellow officers the possibility that Subject 1 might be armed.

When weighing all the evidence, although it is possible the Officer A saw Subject 1 holding the gun as he says, it is also possible that he did not actually see the gun, but observed Subject 1 reaching at or near his waistband giving the appearance that Subject 1 was armed. Therefore, there is insufficient evidence supporting that it was unreasonable for Officer A to believe that Subject 1 was armed.

2. The evidence does not support Officer A's claim that Subject 1 made a gesture that could reasonably be construed as a potential threat to use a firearm.

The law makes clear that an officer is not "required to wait until he sets eyes upon [a] weapon before employing deadly force to protect himself against a fleeing suspect who turns and moves as though to draw a gun." *Thompson v. Hubbard*, 257 F.3d 896, 899 (8th Cir. 2001). However, the fact that a fleeing suspect is armed, in and of itself, is insufficient to justify the use of deadly force. *See, e.g., Curnow v. Ridgecrest*, 952 F.2d 321, 325 (9th Cir. 1991) (denying qualified immunity to officers who shot an armed subject who did not point the gun at them and

¹⁴⁶ *Id.* at p. 13

¹⁴⁷ Att. 11 at p. 69

¹⁴⁸ Att. 129 at p. 32

¹⁴⁹ Att. 111 at pages 50-51

were not facing them). Therefore, assuming arguendo, that Officer A's belief that Subject 1 was armed as he fled through the yards and over fences was objectively reasonable, that alone was insufficient to justify the use of deadly force. *See, e.g., Cruz v. City of Anaheim*, 765 F.3d 1076, 1078 (9th Cir. 2014) ("if the [armed] suspect doesn't reach for his waistband or make some similar threatening gesture, it would clearly be unreasonable for the officers to shoot him").

Here, the only evidence that suggests Subject 1 made a threatening gesture at Officer A is Officer A's own statements and deposition testimony. We need not merely accept Officer A's account of the events at issue. *Cruz v. City of Anaheim*, 765 F.3d 1076, 1079 (9th Cir. 2014) ("[I]n the deadly force context, we cannot simply accept what may be a self-serving account by the police officer.") (quoting *Scott v. Henrich*, 39 F.3d 912, 915 (9th Cir. 1994)). Rather, we must parse through all the evidence to assess the plausibility and reliability of the officer's account. *Id.* (noting that a court reviewing a use of deadly force incident must examine all the evidence in the record "to determine whether the officer's story is internally consistent and consistent with other known facts"). This includes circumstantial evidence that, if believed, would tend to discredit the police officer's story. *Cruz*, 765 F.3d at 1079.

To assess whether the officer's story is internally consistent we must review and compare the information Officer A provided to explain his justification for firing at Subject 1 in that moment. As outlined above, Officer A discussed this on five separate occasions between the November 8, 2012 incident and his last statement which was provided on July 20, 2016. Given that these statements span a period of almost 4 years, minor inconsistencies would be expected. To be sure, merely pointing out minor discrepancies would be an insufficient basis upon which to challenge the reliability of an officer's account. *See, Tom v. Voids*, 963 F.2d 952, 961 (7th Cir. 1992).

Nonetheless, the reliability of Officer A's account of the events is questionable in light of the inconsistencies in his statements and the fact that his account is also inconsistent with other relevant, albeit circumstantial, evidence.

- a. ***It is unlikely that Subject 1 made the threatening gesture Officer A describes because: (1) Subject 1 was gaining distance on the officer as he fled; (2) Subject 1 was not, in fact, armed; and (3) Subject 1 was shot in the back of the head.***

Based on a review of the facts, it is reasonable to conclude that Officer A's account of what led him to fire at Subject 1 is controverted by other evidence in several respects. First, it is unlikely that Subject 1 would have stopped to confront the officer in the manner described when Subject 1 was successfully gaining ground on the officer. Second, Subject 1 was NOT armed and there was no reason for him to be reaching to his left side as the officer has described. Third, Officer A's description is inconsistent with the fact that the single shot he fired hit Subject 1 almost squarely in the back of the head.

Officer A claims that, after he scaled the last fence, Subject 1 reached toward his waist area and started turning towards the officer. This lacks credibility in light of the fact that Subject 1 was already two city lots away from the officer. According to Civilian 1, Officer

A had gotten caught on a fence during the pursuit, which likely enabled Subject 1 to increase the distance between himself and the officer. In fact, Officer D recalls hearing the fence rattle which sound he believed was caused by Officer A trying to get over the fence. In Civilian 1's view, Subject 1 would have made good his escape had he not been shot. Of note, Officer A has never mentioned the fact that he got caught on a fence during the foot chase.

Even if Officer A's belief that Subject 1 was armed is considered reasonable, the fact that Subject 1 was actually not armed at the time he was shot is relevant and provides the basis upon which to draw reasonable inferences regarding Subject 1's behavior.¹⁵⁰ Given that Subject 1, in fact, had no firearm in his pants, it is unlikely that he would have made a gesture indicating that he did, particularly in light of the fact that he was approximately 50 feet away from the officer and was likely gaining ground on him given that the officer had become stuck on the fence.

Even if Officer A reasonably believed Subject 1 was armed, where there was no threatened use of the weapon, there was no justification for the use of deadly force. *See Haugen v. Brosseau*, 339 F.3d 857, 870 (9th Cir. 2003) ("just as *Garner* instructs that, to comply with the Fourth Amendment, an officer must sometimes forgo or discontinue deadly force and allow a suspect to escape, state tort laws and police practice experts instruct that an officer must sometimes forgo a chase and allow a suspect to escape").

There is another important piece of verifiable evidence that undermines the plausibility of Officer A's account of the events — the fact that Subject 1 was shot in the back of the head. According to the medical examiner's report, Subject 1 was shot in the back of the head, "5.5 inches beneath the top of the head, in the midline." Further, the wound "coursed from back to front."¹⁵¹ The physical evidence showing that Subject 1 was shot in the back of the head also includes the hoodie he was wearing. This evidence suggests that Subject 1 was facing away from the officer when he was shot.

To be sure, in reaction to seeing the shooting, Civilian 1 called 911 and reported that she had seen an officer shoot someone in the back: "some boy was just runnin' from the police officers ... and... while he was jumpin' the gate, one of the officers just shot him in the back."¹⁵² The fact that this statement was made contemporaneously with the actual event weighs in favor of its reliability, as does the fact that it is corroborated by the physical evidence. In fact, courts routinely rely upon the veracity of these statements and consider 911 calls to be admissible under

¹⁵⁰ "Ordinarily, facts unknown to an officer prior to the shooting are prevented from being used to attack his credibility. Where the facts are controverted in a reasonable force case, impeachment by contradiction is allowed". *Common v. City of Chicago*, 661 F.3d 940, 946 (7th Cir. 2011). In the present case, Officer A's version of the events is controverted by physical evidence and eye witness testimony. Therefore, the fact that Subject 1 was not armed, although unknown to Officer A at the time of the shooting, becomes relevant to assess the credibility of his statement.

¹⁵¹ Att. 55 at p. 2

¹⁵² Att. 53

the exited utterance exception to the hearsay rule because those statement are "relating to a startling event or condition made while the declarant was under the stress of excitement cause by the event or condition." *Castro v. Police Board of City of Chicago* 2016 IL App (1st) 14205057 (June 21, 2016).

When asked to explain how Subject 1 could have been shot in the back of the head, Officer A stated: "um my guess is he turned his head back when simultaneously, split second, prob'lly just turned his head right back." But, this is inconsistent with the officer's own words to describe the sequence of events. Officer A has consistently claimed that he fired as Subject 1 *began* to turn toward to him. In his deposition, Officer A stated that Subject 1 "then *begins* turning towards me and I fire one shot." In the 20 July 2016 IPRA statement, Officer A stated: "The point he turned towards me ... I fired, it's almost simultaneously." A recent United States District Court case, *Childs v. City of Chicago*, involved eerily similar circumstances, namely, the shooting of a fleeing suspect whom officers believed was carrying a firearm because he was clinching his waistband but was ultimately found to be unarmed. In that case, the United States District Court found that the fact that the subject of the foot chase was shot in the back in the head suggested that he posed less of a threat to the officer. 2017 U.S. Dist. LEXIS 45156 (N.D. Ill. 2017).

b. The inconsistencies among and within Officer A's statements about what he observed undermine the reliability of the officer's version of the events.

The inconsistencies between and within Officer A's varying accounts of the circumstances that led him to fire provide a basis to question the reliability of his version of the events. See *Ortega v. San Diego Police Dept.*, 2014 WL 6388488 (SD Cal. 2014) (acknowledging that it is proper for a fact-finder to "take notice of inconsistencies" in an officer's statement when evaluating the circumstances of a use of force incident).

Officer A described seeing Subject 1 reach at, into, or fumble around at his waist, yet the officer acknowledges that Subject 1 was facing away from him as he fled, which would make it difficult for the officer to see what his hands were doing in front of his body.

Officer A's deposition testimony, that he could see Subject 1's face and that he looked "irritated," is also at odds with his own account that Subject 1 was facing away from the officer, and that he fired as Subject 1 "began" to turn toward the officer. Moreover, in his deposition testimony, he described Subject 1 as appearing to be irritated, while in his 4 March 2016 IPRA statement he described Subject 1's appearance as "nervous."

In addition to inconsistencies among the statements, there are also inconsistencies within the statements given by Officer A. For example, in the March 4, 2016 statement, Officer A described Subject 1's movement as "abrupt," but later, says his body language was "like indecisive." According to Officer B, while on scene, Officer A told him that "he believed Subject 1 to still have a weapon and he believed that Subject 1 *was going to turn his direction and fire — you know, possibly, you know, fire a weapon*. He just basically explained to me, you know he made a movement in his direction that placed him in fear of his

life.¹⁵³ The fact that Officer A believed that Subject 1 was "going to turn" in the officer's direction is an entirely different thought than Officer A actually observing Subject 1 make a threatening movement in the officer's direction.

B. Officer A's Use of Deadly Force Was Not Permissible Based On The Circumstances Under Which Subject 1 Was Fleeing From The Officer.

As explicitly stated in the second prong of the Chicago Police Department policy governing the use of deadly force, under certain circumstances, a law enforcement officer is permitted to use deadly force against a person who is attempting to defeat an arrest or escape if the officer reasonably believes that the person:

- a. has committed or has attempted to commit a forcible felony which involves the infliction, threatened infliction, or threatened use of physical force likely to cause death or great bodily harm;
- b. is attempting to escape by use of a deadly weapon or;
- c. otherwise indicates that he or she will endanger human life or inflict great bodily harm unless arrested without delay.

Under the circumstances here, subsection (a) of the policy does not apply. There is no evidence to suggest that Subject 1 had committed a forcible felony. The original call to which Officer A and his partner had responded before they encountered Subject 1 was a report of a burglary in progress that did not pan out to be an actual burglary in progress.¹⁵⁴ Officer A had no other information from which to suspect Subject 1 had committed or attempted to commit a forcible felony.

Neither does subsection (b) of the policy apply. There is no evidence to suggest that Subject 1 was attempting to escape by use of a deadly weapon. To the contrary, the evidence clearly establishes that Subject 1 was unarmed when he was shot.

Thus, the only potential element of the fleeing felon prong of the use of force policy is subsection (c), which allows the use of deadly force against a person that the officer reasonably believes will endanger human life or inflict great bodily harm unless arrested without delay. The only fact that indicates that Subject 1 might endanger human life or inflict great bodily harm unless arrested without delay is that the officer reasonably believed that he was or might be armed with a firearm. This, in and of itself, is insufficient to establish that Subject 1 represented an imminent threat to anyone if not arrested right then and there. Therefore, this subsection of the policy does not apply.

CONCLUSION

The events that occurred on November 8, 2012 which resulted in the death of Subject 1 are undoubtedly tragic. However, the analysis of these events and the application of the

¹⁵³ Att. 112at pages 76-77

¹⁵⁴ Att. 80 at p. 7

relevant laws and orders must remain unaffected by tragic outcomes. After careful examination of the evidence and thorough analysis of the applicable law, IRPA has determined by a preponderance of the evidence that Officer A's use of deadly force against Subject 1 was objectively unreasonable, as outlined by the Use of Force Model, the Illinois State Statute, and the Chicago Police Department's General Orders. IPRA relies upon the inconsistencies in Officer A's statements, contravening physical evidence, and eyewitness testimony to determine that Officer A was unreasonable in his belief that Subject 1 presented an imminent threat of death or bodily harm to the officer, thereby necessitating the use of deadly force.

ALLEGATION 1: Officer A used an unreasonable and excessive amount of force when he shot Subject 1 is **SUSTAINED**;

ALLEGATION 2: Officer A used deadly force against Subject 1 which was unprovoked and unwarranted is **SUSTAINED**.